Manuale di Teologia Morale

PREFACE TO THE FIRST EDITION

THE object of the book which is herewith offered to the public is to present the common teaching of the Catholic moral theologians in an English dress. That common teaching is to be had in innumerable works written for the most part in Latin, but as far as I am aware there is no complete manual of moral theology in English. Yet that such a book will be found useful seems certain from the fact that works of the kind exist in abundance in other modern languages. In German we have Pruner, Probst, Linsenmann, and many others; in French, the well-known works of Gousset and Gaume; in Italian, Frassinetti; in Spanish, Villafuertes, Moran, and others. It may then confidently be expected that especially the ecclesiastical students and Catholic clergy of English-speaking countries will welcome a book intended chiefly for their benefit. The writer is not without hopes of its doing good even among non-Catholics. Among these the moral theology of the Catholic Church is little understood and constantly misrepresented and maligned. Of course, it does not merit the bad reputation which has been fastened on it by Protestant and Jansenist slander. It is the product of centuries of labour bestowed by able and holy men on the practical problems of Christian ethics. Here, however, we must ask the reader to bear in mind that manuals of moral theology are technical works intended to help the confessor and the parish priest in the discharge of their duties. They are as technical as the textbooks of the lawyer and the doctor. They are not intended for edification, nor do they hold up a high ideal of Christian perfection for the imitation of the faithful. They deal with what is of obligation under pain of sin; they are books of moral pathology. They are necessary for the Catholic priest to enable him to administer the sacra-

ment of Penance and to fulfil his other duties; they are intended to serve this purpose, and they should not be censured for not being what they were never intended to be. Ascetical and mystical literature which treats of the higher spiritual life is very abundant in the Catholic Church, and it should be consulted by those who desire to know the lofty ideals of life which the Catholic Church places before her children and encourages them to practise. Moral theology proposes to itself the humbler but still necessary task of defining what is right and what wrong in all the practical relations of the Christian life. This all, but more especially priests, should know. The first step on the right road of conduct is to avoid evil; in the doing of good each will act according to his vocation and opportunities, moved and stirred by the grace of God, who works in all as he wills.

PREFACE TO THE FIFTH EDITION

THE aim of this work was to state the Moral Theology of the Catholic Church as clearly and briefly as possible. A large portion of the Moral Theology of the Catholic Church depends on positive law. Many changes of far-reaching consequence were made in the positive law of the Church by the new Code of Canon Law. The new Code canonizes the law of the country on such important questions as Prescription and Contract. It changes the nature of more than one diriment impediment of Marriage. It alters numberless details on many other points of Church law. In this edition I have tried to bring my book into harmony with the existing law and teaching of the Catholic Church.

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BOOK I

HUMAN ACTS

CHAPTER I

WHAT IS A HUMAN ACT?

1. THE Christian faith teaches that the end of human life is to know, love, and serve God. If a man fulfils this obligation faithfully till death, it further gives him the assured hope of eternal happiness with God in heaven. All our actions should be directed towards the end for which the whole man exists; if an action is such that it conduces to that end, it is a good, moral action; if, on the contrary, it does not conduce to that end, it is a bad, immoral action.

Not all man's actions, however, are capable of being invested with this moral quality. There are many actions of man which have no more moral quality than the growth of a tree in the garden or the running of a dog in the street. Good or bad digestion is an operation to a great extent removed from man's control; he is in general no more responsible for it than for the condition in which he was born. Or, if some immoral picture is suddenly thrust under his eyes, he cannot help seeing it. Such acts are neither moral nor immoral; they are neither capable of conducing to the end of moral human action, nor of diverting the agent from it: they merit neither praise nor blame.

2. A man is a good man morally if he performs well the good actions over which he has control; he is a bad man if he wilfully performs bad actions. So that the actions over which a man has control, the actions which he freely performs, are alone capable of making him a good or a bad man; they are the only actions of man which have a moral quality; they alone are treated of in moral theology. It is the task of moral theology to frame rules for human conduct according to the teaching of the Catholic Church, to decide what actions are good and what bad according to the principles of the Christian faith.

3. The actions over which a man has control are in a special sense called human acts, because they are due to his free

choice. That man has the power of free choice or free will, is clearly taught in Holy Scripture, and is a dogma of faith.[1] It is also a truth of sound philosophy,[2] vouched for by the consciousness of each individual and by the common sense of mankind. It does not belong to our province to prove the doctrine. We suppose that, at any rate in many of his daily actions, when all the conditions requisite for action are present, a man is free to act or not, to perform this action rather than that other. A man must indeed have a motive for action, but that motive does not constrain him to act; if he has the use and control of his reason, he may as long as he is in life perform or abstain from the action proposed to him. Man has the wonderful power, unique in all the visible creation, of directing his mental and bodily activity in this way or that according to his good pleasure; and it is this wonderful power which makes him a moral agent, and makes it worth while to discuss and formulate rules of human conduct. Man himself is the cause of his human acts; he freely directs them to the end of human existence, or to some perverse end of his own choice.

4. This power of free choice is a property of the rational will, and is the natural complement of the deliberative reason with which man is also endowed. For among the various objects offered to the will's acceptance, the reason can propose motives for the selection of one object rather than of another, and, at any rate in many actions, until the deliberation is finished, the will need not decide between them. If an object capable of satisfying all our desires were presented to us, there would indeed be no room for deliberation; as Dante expresses it:

> Such one becomes, admiring that blest Ray,
> That, whatsoever else allure the sight,
> Impossible it is to turn away;
> Because the one sole wished-for Good is there,
> And everything defective elsewhere found,
> In it is perfected beyond compare.
> *Paradiso*, xxxiii 100. Wright's translation.

In the presence of such an object, the whole man, with all the vehemence of his will made for good, would rush into the embrace of his God. For God alone is capable of wholly satisfying all man's desires. Or again, if some object of ardent natural desire were suddenly thrust upon us, leaving no time for deliberation, overwhelming us with the idea of its power

[1] Ecclus. xxxi 10; Trent., sess. 6, can. 5, 6.
[2] M. Maher, *Psychology*, 5th ed., p. 394.

to satisfy our appetite, it might be that no room was left for free choice, that we should be necessitated to action. There would be at least some indeliberate motion towards the object, a movement of the will which divines call *motus primo-primus*. If in such a case the power of deliberation is not altogether smothered, but is exercised, though imperfectly, the movement of the will which follows is called *secundo-primus*. If the power of deliberation is wholly wanting, the act which follows cannot be sinful, however wrong objectively; if the act is semi-deliberate, however grievously wrong in itself, it will be imputed to the agent only as a more or less serious venial sin.[1]

These principles are of great importance for forming an estimate of the moral guilt of children, of habitual drunkards, of persons long habituated to sins of the flesh, and persons with weak intellect.

It follows from what has been said that previous knowledge of, and deliberation about, the object proposed by the intellect to the will, is necessary to free and moral action, which is defined by divines to be action which proceeds from man's deliberative will.[2]

5. Human acts are by theologians divided into various classes:

(*a*) *Internal* acts are performed by the internal powers of the soul; *external*, by the bodily organs.

(*b*) *Elicited* acts are such as proceed immediately from the will and are performed by it alone. They are usually said to be six in number; three having reference to the end, and three others to the means for the attaining of the end. A *wish* is a simple inclination of the will or an ineffectual desire of an object; an *intention* is a firm resolve to attain an object by the use of the appropriate means; *fruition* is a peaceful delight in the possession, real or imagined, of a loved object. The act of selection between various means to an end is called *choice;* if no alternative is offered by the intellect, acceptance of the means by the will is called *consent*, though this term is more commonly used of every act of acceptance by the will of an object proposed to it; *use* or *execution* is said of the act of the will which applies the means chosen to the obtaining of the end proposed.

Commanded acts are executed by other faculties than the will by which they are commanded.

[1] St Thomas, 1-2, q. 77, a. 7.
[2] St Thomas, 1-2, q. 1, a. 1.

(*c*) *Natural* acts are performed by man's faculties unaided by divine grace; *supernatural*, by the help of God's grace.

(*d*) *Good* actions are conformed to the rules of morality; *bad* actions are contrary to them; those that are *indifferent* may be good or bad according to circumstances.

(*e*) *Valid* acts are such as have all the conditions requisite, and so produce their effect; *invalid* acts are destitute of some condition necessary to produce their effect.

CHAPTER II

VOLUNTARY ACTS

1. HUMAN acts, the subject-matter of moral theology, are also called voluntary acts to distinguish them from such actions as are produced under external compulsion. For voluntary acts are the effect of an internal principle, the will (*voluntas*). The term, however, is ordinarily used not of all actions which are produced by an internal principle, for some of these are specially denominated *spontaneous* or *reflex* actions. These latter are the immediate result of sense excitation without the intervention of consciousness. Thus the eyelid closes to protect the threatened organ, and the hand rises involuntarily to drive off a troublesome fly. Voluntary in the strict sense is used only of actions produced by the will with rational knowledge of, and inclination towards, the object. Voluntary actions are produced with consciousness and deliberation. Thus, practically and in the concrete, voluntary actions are identical with human acts, though their connotation is different. For human acts connote freedom, as we have seen, while an act may be voluntary and yet not free. The beatific vision by which the blessed see God face to face, and are thereby thrilled with ineffable delight, is a voluntary act; it proceeds from the will with full and clear knowledge of God, but it is not free; the blessed cannot avert their gaze from the Infinite Beauty which enraptures every fibre of their being. However, all voluntary acts of man are in this life free, and so, for the purposes of moral theology, human acts and voluntary acts are interchangeable terms.

2. An act may be voluntary in various ways:

(*a*) An act is *perfectly* voluntary if it proceeds from the will with full knowledge and deliberation; if the knowledge and deliberation are not full, the act is *imperfectly* voluntary.

(*b*) *Simply* or *absolutely* voluntary is distinguished from voluntary *under a certain respect*, or *secundum quid*. More commonly an action which under the circumstances is willed, but which would not be willed if the circumstances were different, is said to be *simply* or *absolutely* voluntary; while inasmuch as the same action would not be willed if the cir-

cumstances were different, it may also be said to be only voluntary *under a certain respect.* Thus, to take the well-worn example, when the merchant is willing in a storm that his goods should be thrown overboard to save the ship, the action is *simply* voluntary; he would not will it unless the ship were in danger, so that it is also voluntary only *under a certain respect.*

(*c*) An action is said to be voluntary *in itself* when it is in itself and by itself the object of the will; if it is merely the effect of something else which is willed, it is then called voluntary *in something else*, or voluntary *in the cause.*

Frequently *directly* and *indirectly* voluntary are used in the same sense as voluntary in itself and voluntary in the cause.

3. All voluntary action is imputed to the agent for praise or blame, merit or demerit; for the action is free, as we have seen, and proceeds from a positive inclination of the will. This inclination of the will is an important element in voluntary actions; the absence of it prevents the sin of man being imputed to God as voluntary, and the same principle sometimes justifies us in performing an action which is right in itself, though some of its effects are evil. But this is an important point and requires fuller treatment.

First of all then, let us see what is required before an evil effect of my action can justly be imputed to me and make me morally guilty.

(*a*) The evil effect must in some measure be foreseen, otherwise it will be involuntary and not imputable. And so no moral blame attaches to a man who, thinking that he is drinking water, swallows poison.

(*b*) The agent must be able to prevent the evil effect, for we are only responsible for what is under our control. The engine-driver of an express train is not responsible for the death of a person who suddenly throws himself under the wheels of the engine.

(*c*) There must be an obligation not to perform the action by reason of the evil effect which would follow from it. If the evil effect follows merely by accident, it does not render an otherwise lawful action unlawful, and I am not bound to abstain from it on account of the mere possibility of the evil effect following from it. Thus, if a hundred people indulge in hunting or motoring for a considerable time, some one of them is morally certain to meet with an accident endangering life or limb. But this does not make hunting or motoring morally wrong. Though I am conscious that the accident

may happen to me, I may nevertheless hunt or use the motor-car as usual. If I kill myself or someone else, it will be merely by accident, for it is presumed that I use reasonable care to avoid mishap.

On the other hand, a superior, whose commands I am bound to obey, may have used his authority to forbid an action on account of the possible evil effect which may follow therefrom. In that case I must abstain from the action by reason of the command of my superior, though otherwise I should be free. And so if a father, for special reasons, forbids his son to go to the theatre, the son should obey, as long as he is subject to parental authority. Again, even though there may be no positive command of a superior, in cases where no good would come from the action, and where the only effects would be evil, I am bound to abstain from the action, which in that case itself becomes evil. Similarly, where the evil effects are largely in excess of the good, right reason tells me that I must abstain from the action. But there are many actions which are forbidden by no lawful authority, which have both good and evil effects, while it is not clear that the latter largely outweigh the former. Am I bound to abstain from such actions, or when am I bound to abstain from them ?

4. In order to provide a general rule of conduct in such circumstances, divines have formulated what is known as the principle of a double effect. That principle may be enunciated as follows:

It is lawful to perform an action which produces two effects, one good, the other bad, provided that (1) the action, viewed in itself, is good, or at least indifferent; (2) the agent does not intend the evil effect, but only the good; (3) the good effect is produced as immediately as—that is, not by means of—the bad; and (4) there is a sufficiently weighty reason for permitting the evil effect.

This rule will furnish us with a guide in case of doubt whether we are bound to abstain from any given action because of some evil effect which will follow from it. We shall be at liberty to perform the action in question provided that four conditions are realized. In the first place, the action itself, apart from the evil effect, must not be bad. If it is bad in itself, there can be no question about its lawfulness. Further, the agent must not intend the evil effect, though he foresees that it will follow. If he intends it, the evil effect becomes voluntary in itself and imputable to the agent. Then, the good effect must not be the result of the bad, for we must

not do evil that good may come; the end does not justify the means.[1] Lastly, there must be such a proportion between the good and bad effects that right reason tells me that I am not forbidden to forego the good effect of the action on account of the bad being inextricably bound up with it.

The question as to whether a general is justified in ordering his army to take a stronghold by assault in war will serve to illustrate the principle and its use. In the first place, the assault must be justified by itself, apart from the cost in human life. The assault will be justified in itself if the war is just and the stronghold belongs to the enemy; it will not be justified if the war is one of unjust aggression, or if the general has been expressly ordered by his Government not to take the place. Moreover, the general must not directly intend the necessary loss of life among the innocent non-belligerents. He foresees and deplores it; he is said in the technical language of theology to *permit* the evil effect, not to *intend* it. The slaughter of innocent non-belligerents must not be the means chosen to capture the stronghold; evil may not be done that good may come. Finally, the capture of the place must be a matter of sufficient importance in the war to warrant the shedding of innocent blood in the bombardment, and the other evils necessarily entailed in an assault. The question as to when the good result is sufficient to outweigh the evil is largely a matter of sound judgement after a careful examination of all the circumstances. If the successful storming of the place would only add to the personal reputation of the general without bringing the end of the war any the nearer, the assault would be a crime; if it would compel the enemy to sue for peace, it would usually be justified.

This principle is of great importance in Moral Theology; it has in its support the common consent of divines, and is expressly used by St Thomas.[2]

5. If I am not justified, according to the foregoing principle, in performing an action which causes some evil effect, that evil effect is imputable to me though I did not intend it in itself; it is not indeed voluntary in itself, but it is voluntary in its cause, and I am bound to avoid evil even though only voluntary in its cause.

When, however, evil is not voluntary in itself, but only voluntary in its cause, a question arises concerning the degree of moral guilt which is contracted when such a cause of evil is posited unwarrantably. The case arises especially when

[1] Rom. iii 8. [2] *Summa*, 2-2, q. 64, a. 7.

grave evil is the result of an action which in itself is only venially sinful, as when grave harm is the result of slight negligence. Of course, great evil arising from grave negligence is seriously sinful even though only voluntary in the cause; and so a doctor who through grave negligence kills his patient is guilty of a great sin, though he did not intend the homicide. But supposing that in passing through a gate in the country I leave it open, owing to slight negligence, and in consequence a neighbour's crop is seriously damaged by his cows getting among the corn; do I commit a grave sin in that case? Of course, if owing to the circumstances I clearly foresaw that the damage was certain to follow and I could easily have closed the gate if I chose, I certainly sin grievously in not closing it; the negligence is then grave. But our case supposes circumstances to be such that the negligence is only slight, partly on account of the uncertainty of harm following, partly because I had frequently seen the gate standing open, and for other reasons. Will the neglect to close the gate after me in such circumstances be grievously sinful on account of the serious harm to my neighbour which was the consequence? The answer must be "No." For the harm did not follow necessarily and exclusively from my neglect; my action was not the immediate and necessary cause of the damage done to the crop; other agents intervened; my action was only slightly responsible for what followed. Inasmuch, then, as the malice of the cause is only slight, and this alone is voluntary in itself, the evil effect which is only voluntary in the cause will be imputed only as a venial sin.

6. Theologians dispute about the question whether such a sin of omission as is committed by not closing the gate after me, with resulting loss to my neighbour, can be committed without a special act, by simply neglecting to put the act which was of obligation.

The question is not a very practical one; it will be sufficient to say in reply that physically a man who adverts to the obligation of doing something may hold himself neutral, and so sin by omission without doing anything; practically, however, in such cases, a positive determination is formed not to perform the duty, or at least to perform something else which is foreseen to be an obstacle to the performance of the duty.[1]

7. The question sometimes arises at what time a sin of omission or a sin which is voluntary only in the cause is committed. When a man gets drunk on the Saturday evening

[1] Suarez, tract. 5, d. 3, sec. 2, n. 6.

and foresees that in consequence he will not be able to attend Mass on the following day, is the sin of omitting to hear Mass committed on the Saturday night, when he voluntarily posits the cause of his not hearing Mass on the following day, or on the Sunday, when Mass is not heard as is of obligation? Inasmuch as a formal sin is a human act, it would seem that we must say with St Alphonsus[1] that the sin is committed when the cause of the omission or of the evil is voluntarily posited, otherwise we should have to say that a man may commit sin without knowing it, or while he is asleep.

[1] *Theol. Mor.* lib. 5, 10.

CHAPTER III

OBSTACLES TO VOLUNTARY ACTION

WE have seen that we are responsible only for those actions which are performed with knowledge or advertence and freedom of choice. Whatever tends to prevent or lessen advertence, or to restrict liberty, will tend to diminish our responsibility. Ignorance affects advertence, fear and violence influence freedom of choice, and concupiscence influences both. Something must now be said on each of these causes which affect the voluntariness and imputability of our actions.

SECTION I

On Ignorance

1. Ignorance is the absence of knowledge which the person who is ignorant should have. It is thus distinguished from *nescience*, which is merely the absence of knowledge, without the implication that the knowledge should be possessed.

Ignorance must also be carefully distinguished from *error* or *mistake*, which is a false judgement concerning something. Thus, if I simply do not know the person to whom I am speaking, I am in ignorance of his identity; if I mistake him for someone else, I am in error.

2. (*a*) With reference to the subject who is ignorant, ignorance is either *invincible* or *vincible*.

Invincible ignorance cannot be dispelled by the use of ordinary diligence. This may arise in my mind either because no thought of my want of knowledge occurs to me, and so the idea of making inquiries never enters into my head, or because I have failed to acquire knowledge on the point, though I made all reasonable efforts to do so. What efforts should be made in any given case depends on the character and circumstances of the person and the matter on which he is ignorant. If the matter is of great importance, if it affects the salvation of souls or the spiritual and temporal welfare of large numbers, great efforts must be made to dissipate ignorance; the efforts which would be sufficient in the case of one poorly instructed, or very much occupied with other weighty affairs, would not be

sufficient in other cases where these suppositions are not verified. In general, where knowledge is of obligation those efforts must be made to acquire it which ordinarily prudent and good men would exert in the circumstances.

Vincible ignorance is such as can be removed by the use of the requisite diligence. Various degrees are distinguished by divines according as some, or little, or no diligence is exercised to dispel it or means are used to foster it. If means are used to foster it, the ignorance is called *affected;* if little or no diligence is used to dispel it, it is called *crass* or *supine;* if some diligence is used, but not what is required in the case, it is called *simply vincible* ignorance.

(*b*) With reference to the object of ignorance, we must distinguish ignorance of *law*, *fact*, and *penalty*. There is ignorance of law, if the law's existence is not known, as when a Catholic does not know that the Church forbids marriage within the third degree of kindred. There would be ignorance of fact, if it were not known that A. B. is related to C. D. within the third degree. Ignorance of the penalty is distinguished from ignorance of law when some special sanction is not known, though the law itself is known.

(*c*) With reference to the action of the subject, we distinguish *antecedent*, *consequent*, and *concomitant* ignorance. Antecedent ignorance is not voluntary, it is not willed by the subject; consequent ignorance is voluntary; concomitant is not expressly willed, but the action which is done with concomitant ignorance would *ex hypothesi* be done, even if the ignorance did not exist.

3. Invincible ignorance, as defined above, excuses from fault, so that, however bad an action done in invincible ignorance may be, it cannot be a formal sin. The reason is obvious; there is no knowledge in the agent of the malice of the action, and so the bad action is involuntary, and not imputable.[1]

4. Vincible ignorance of the malice of the act, however, cannot excuse one who does wrong. He does not indeed will the evil in itself, but he wills its cause, and so it is voluntary in its cause and imputable. A person who sins in simply vincible ignorance, or even in crass ignorance, is indeed less blameworthy than one who sins with full knowledge of the malice of his act; the sin is only imperfectly voluntary, and less imputable than if perfectly voluntary. There is an apparent difference of opinion among theologians as to whether affected ignorance increases or lessens the malice of a wrong

[1] Prop. 2 damn. ab Alex. viii; 68 inter Baianas, can. 2202.

action. With many modern authors it seems best to distinguish the motive with which in each case ignorance is fostered. If the state of ignorance is fostered through fear of being compelled by knowledge to abstain from the sinful act, such affected ignorance would seem to lessen the malice of the sin; the wrongdoer would not in this case venture to sin if he had full knowledge, and so he fosters his ignorance; his will is less malicious than if he sinned with full deliberation and consent. If, on the contrary, he merely fosters his ignorance to be able to plead it in excuse, and he is so bent on sinning that he would do the act in the same way even if he had full knowledge of its malice, then it does not seem to diminish the sin; it is rather a sign of an absolute determination to commit the sin.[1]

We saw in a former chapter that the degree of malice which attaches to a sin committed in more or less culpable ignorance is measured rather by the sinfulness of the neglect to put away the ignorance, than by the sinfulness of the act in itself.

5. Ignorance itself of what we are bound to know, as of the obligations of our state of life, of the truths of faith which are necessary to salvation, is sinful if consequent and vincible; antecedent and invincible ignorance is of course not sinful.

6. Ignorance does not render an act invalid which has all other requisites for its validity; and so baptism conferred by one who knows nothing about its effects will be valid, if the matter and form are correctly applied with the intention of doing what the Church does. Substantial error or mistake about the person with whom marriage is contracted will invalidate the contract, while ignorance of who the person is will not, if there be the will to marry.

Section II

On Concupiscence

1. In theology concupiscence is used in two distinct senses. It frequently signifies the inclination to evil, which in human nature is a result of the fall of our first parents. In this sense it is called sin by the Apostle.[2] Without any moral or immoral implication the word is used here to denote any passion or any movement of the sensitive appetite towards its proper object. It comprehends, therefore, any movement of love, desire, or hatred, sorrow, anger, or delight.

[1] Bucceroni, 1, n. 51, can. 2229.
[2] Trent, sess. 5, de pec. orig.

Concupiscence is *antecedent* or *consequent*. The former precedes any action of the will, and so is involuntary. The latter is voluntary, either because it is deliberately and directly excited by the will, or at any rate willed in its cause.

2. Antecedent concupiscence lessens the malice of an evil action which is done under its impulse. For concupiscence troubles the intellect, so that it cannot dispassionately weigh the moral quality of the object proposed to the will and the motives for rejecting it; moreover, concupiscence paints the object in more than naturally attractive colours, so that it exerts an undue influence on the will. Concupiscence thus disturbs the indifference of the will and renders the act which follows less voluntary and free. It is accordingly less imputable to the agent.

It sometimes happens that antecedent concupiscence renders the subsequent action involuntary, and so in no wise imputable, however wrong it may be. This will be the case when some sudden onslaught of passion deprives the agent of the use of reason and blindly impels him to evil. Strong passions, such as love or anger, especially in impressionable natures, sometimes produce this result, and even when murder or suicide is committed in such circumstances juries are warranted in bringing in a merciful verdict of murder or suicide while temporarily insane. If, however, the passion was not altogether antecedent, but in the early stages of its onslaught there was room for deliberation, the consequent evil will not be altogether involuntary; it will to some extent be voluntary in its cause at least.[1]

3. It used to be a matter of dispute among theologians whether a man could be insane and not responsible for his actions in some one category, while he retained his self-control in others. In our days it will hardly be disputed that monomania exists, and if it exists, as, for example, in the matter of intoxicating drink, the monomaniac will not be directly responsible for his actions done under the influence of his madness, although he may be responsible for them in their cause.[2]

[1] St Thomas, 1-2, q. 77, a. 7, can. 2206.

[2] Similarly, those who suffer from illusions may be so demented on the particular point as not to be responsible for actions which they perform under the influence of their illusion. It is a question of fact when this is the case, a fact which it is difficult even for experts to determine.

Natural propensities to evil arising from hereditary taint or from temperament lessen the voluntariness of the action just as passion does, but they are not as a rule so strong as to make what in itself is

4. Consequent concupiscence increases the malice of a bad action if it is wilfully excited, because the tendency of the will to evil is voluntarily made more intense. If the passion is voluntary only in its cause, it is rather a sign of the great intensity of the perverse will from which it flows, but which it does not cause.

5. The evil motions of anger, impurity, rash judgement which precede all advertence and deliberation of the mind, cannot of course be sinful, as they are not voluntary. They become sinful when consent is yielded to them after advertence to their malice. The question is discussed among theologians, whether it be sinful, and in what degree, to remain neutral under an evil motion of concupiscence, neither giving consent to it nor positively resisting it. If the question is raised concerning a vehement temptation to impurity, it may reasonably be denied that it is ordinarily possible to remain neutral; the danger of consenting would be too great. In such a case there will usually be a grave obligation to resist positively for fear of being drawn into giving consent. Positive resistance does not mean direct and physical effort, which would be worse than useless; but it means that we must, under temptation, avert our minds from the evil suggestion and occupy them with other thoughts. If, however, the question be put, whether sin is committed by remaining neutral under temptation to evil, not deliberating about committing it, but simply neither consenting to it nor rejecting it, the correct answer would seem to be that a venial but not a mortal sin is thereby

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mortally sinful only venial. The struggle against vice is more difficult for those who are subject to such propensities, but as long as they are in their right senses with the help of God's grace they can resist, if only they take the necessary means. The same must be said of those who have strengthened their passions and weakened their will by long indulgence in a habit of sin. V. Frins, *De Act. Hum.* 1, n. 236.

" There is not, and there never has been, a person who labours under partial delusion only, and is not in other respects insane." C. Mercier, *Criminal Responsibility*, 1905, p. 174.

However, on p. 203 the same author writes: " The majority of insane persons are sane in a considerable proportion of their conduct; and when in this part of their conduct they commit offences they are rightly punishable." Perhaps the explanation of this apparent contradiction lies in a sentence which immediately follows the last. It is this: " Since the limits between the sane and the insane areas of conduct of insane persons are ill defined, no insane person should be punished with the same severity that would be awarded to a sane person for the same offence."

committed. There is some sin, because we are commanded to rule the lower appetites and keep them in subjection to reason, which is not done in the case supposed. But the sin cannot be mortal, for there is no consent of the will, by which alone mortal sin can be committed. This is the teaching of St Thomas and of St Alphonsus.[1]

Section III

On Fear

1. Fear is defined to be a perturbation of the mind on account of some present or future danger.

It is *grave* or *slight* in proportion as the danger is serious or not serious. *Absolutely* grave fear is such as will seriously affect an ordinarily constant man, as the fear of death, of perpetual imprisonment, or of loss of goods; *relatively* grave is such as will seriously affect anyone of timid disposition.

Reverential fear is that which a subject feels lest he should offend his superior. Ordinarily, divines rank it as slight fear, but it may become grave if, for example, a very austere father threaten his daughter with loss of home or with his perpetual displeasure.

Fear *from without* is the result of some external danger, which may arise either from a necessary cause, as, *e.g.*, from the danger of shipwreck; or it may be threatening from a free agent. Fear *from within* is from an internal cause, as the fear of death from a disease which has been contracted.

2. The actions which are done out of fear are simply voluntary, but they are usually also involuntary under a certain respect.

There is no question here of actions which are done *in* fear or *with* fear, as when I walk with fear and trembling along a lonely road by night. We are concerned with the effect which fear has on human actions done in consequence of fear; and unless it deprives the agent of the use of reason, which in rare cases may happen, the action remains voluntary, because it is done freely and deliberately to avoid the threatened danger. In such circumstances, as we saw above, the action is said to be simply voluntary; but it is also involuntary under a certain respect, for, unless the danger threatened, the action would not be done. An exception must be made with regard to attrition elicited from fear of hell, which, if it is to be efficacious, must be simply voluntary and in no respect involuntary, for

[1] *Theol. Mor.* 5, n. 6.

otherwise it would not help to justify the sinner in the sacrament of Penance.[1] We can easily see how this is possible with regard to sin. For other actions done through fear have some evil or loss annexed to them, on which account they are involuntary under some respect; while aversion from sin is wholly good and reasonable, and so there is no reason why repentance for sin from fear of hell should not be simply voluntary and in no respect involuntary.[2]

3. Inasmuch as bad actions done through fear are simply voluntary, it would follow that they are imputable to the agent, so that fear does not excuse him from sin. And this is true of such actions as are intrinsically bad and against the natural law. The Church has always considered those to be apostates who through fear of death or persecution deny their faith, though less culpable than those who renounce it without excuse (Can. 2205).

However, with regard to positive precepts, grave fear ordinarily excuses transgressors of them from sin. The reason is, because the legislator is not presumed to desire that his laws should bind when their observance would entail such grave consequences to his subjects. Divines, relying on what we read in Holy Scripture, teach this doctrine concerning the positive law of God, and it will be all the more true of positive human legislation.[3] But if non-observance of a law or a command of a superior would cause great damage to the common good, then the law or command must be obeyed, even with loss of life; for private advantage must yield to the requirements of the common weal. And so a soldier must stick to his post in war, even at the risk of life.

SECTION IV

On Violence

1. Violence or coercion is the using of greater force than can be resisted to compel another to perform some action against his will. In certain connections the person who suffers violence is said in English law to be under *duress*.

It follows from the definition that violence is from something external to the agent; no one can offer violence to himself; and that the subject resists to the utmost of his power.

[1] Trent, sess. 14, c. 4.
[2] St Alphonsus, 6, n. 442.
[3] St Thomas, 3, q. 40, a. 4, ad 3; 1-2, q. 100, a. 8, ad 4; Suarez, *De Leg.* 3, c. 30, n. 6; Can. 2205, sec. 2.

If the resistance is only partial, there is violence only under a certain respect (*secundum quid*).

2. The elicited acts of the will cannot be forced by violence, for in that case the agent would will and not will at the same time.

3. The other internal faculties, and much more the external faculties of man, may be subject to violence. If the violence is absolute, the resulting action is involuntary and not imputable to him who suffers violence; if the resistance is only partial, the action will be voluntary to a certain extent, and in the same degree it will be imputable to the agent (Can. 2205, sec. 1; 2218, sec. 2).

CHAPTER IV

THE MORALITY OF HUMAN ACTS

SECTION I

On the Essence of Morality

1. BY performing good actions a man becomes a good man morally, and he is a bad man morally if he performs bad actions. Actions are called good or bad morally with reference to the norm or rule of human conduct. So that the morality of an action is its relation to the rule of human conduct. It will be a morally good action if it be conformed to the rule of conduct; otherwise it will be a morally bad action. As men have differed, and do differ, widely in their views as to the meaning of human life and as to man's destiny, they naturally have differed, and do differ, widely in deciding what is the rule of human conduct. The rule in different systems will be progress, or the greatest happiness of the greatest number, or pleasure, or the categorical imperative of the individual reason. Even among Catholic philosophers and divines there is some difference of opinion as to what constitutes the fundamental norm of morality. Practically the different opinions come to much the same, especially as there is greater agreement among Catholics as to what are the formal and proximate rules of morality. The teaching of St Thomas and many others seems to be that the fundamental norm of morality is rational human nature as such. Good in general is that which is conformable to the being whose good it is; and so morally good actions will be such as are conformable to the rational nature of man considered in itself and in all its relations. Man's intellect can know man himself, the existence of God and our relation to him, our relations to other human beings, and to the world round about us; knowing these things, our reason can tell us what actions are becoming and what unbecoming to such a nature. Moreover, reason tells us that although we have the physical liberty to do wrong, we are nevertheless under a moral obligation to abstain from it. Our most wise, and good, and provident Creator, who has given us our nature and placed us in the position which we hold, cannot be indifferent as to

the manner in which we conduct ourselves. The still, small voice of conscience is there to tell us what is right, in the name of God whose herald it is, to approve of what we do well, to condemn what we do ill. The fundamental norm of right conduct, then, is man's moral nature, morally right conduct is conduct in conformity with man's nature in itself and in all its relations. This constitutes right order in the moral world, which God the Creator and provident Ruler of the universe cannot but will us to observe, and this divine Will or Reason bidding us to observe right order and prohibiting its violation is the eternal law of God, the formal objective rule of morality. Human reason, applied to conduct, or conscience, is the formal subjective rule which makes known to us and applies the objective rule.[1]

2. The morality of a human act belongs to it inasmuch as it issues freely from the will with knowledge of its moral quality. Because it is the free product of the human will, a human or a moral act makes a man culpable or praiseworthy. Now the will alone is free, and so morality belongs properly to the internal act of the will. In a perfect human action, indeed, the external act must follow, if it is in the agent's power, in order to the completeness and perfection of the internal act; otherwise there will be no perfect and efficacious will. But the external act, which is called free only with reference to the will from which it proceeds, cannot have any separate morality of its own, nor of itself can it add to the morality of the internal act. In a complete human act, therefore, consisting of an internal and external action, morality is formally in the internal act alone. Accidentally, on account of longer duration, or repetition, or greater intensity which the external act causes, it may add something to the goodness or malice of the internal act, but not in and by itself. A man is good or bad as his will is good or bad.

From this it must not be concluded that an external sin is the same as an internal sin; that if a man has committed fornication, it is sufficient to confess the desire and intention to do so; the malice of the internal and external acts are the same substantially, but an internal act is different from an external act; and so the sins also differ, for sin is a bad human act.

3. There is considerable difference of opinion as to whether, besides the division into good and bad actions, we must also admit a third class, neither good nor bad, but indifferent. In the abstract, indifferent actions certainly exist; to take a walk,

[1] V. Frins, *De Act. Hum.* 2, n. 65.

for example, in itself and in the abstract, is neither a good nor a bad action. But in the concrete, a man's intention, and the circumstances in which the action is performed, necessarily give it a moral quality. The intention must be honest or not, the circumstances must be such as to make the action conformable to right reason or not, and so in the concrete any particular action must be either right or wrong; it must be either good or bad, it cannot be indifferent. An action may of course be morally good, and yet not supernaturally meritorious, and so indifferent from a supernatural point of view; and this perhaps is the meaning of some of those divines who contradict the above teaching of St Thomas and the common opinion of the schools.[1]

4. An action which in itself is not conformable to right reason and order is against the law of nature and intrinsically bad. An action which in itself is not bad, but only bad because forbidden for good reasons by a lawful authority, as eating flesh meat on a day of abstinence, is said to be bad because forbidden; while intrinsically bad actions are forbidden by God because they are bad and inordinate. However, not all these intrinsically bad actions are bad in the same degree. Some are necessarily and always so, because in all circumstances they remain inordinate, as hatred of God, our first beginning and last end. Others in certain circumstances may become lawful, as taking what belongs to another, which in certain circumstances may be done without sin. The State for good reason may grant leave to take another's land for a new railway; and *a fortiori* almighty God, the supreme Lord of all created things, may, without doing an injury, take the life, rights, or property of his creatures. Many divines explain the spoliation of the Egyptians, and the divine toleration of polygamy in the Old Law, by the aid of this principle.

Finally, some actions, as obscene touches and looks, are commonly inordinate and sinful; but if there is good reason for them, and due caution be exercised, they become lawful.[2]

Section II

The Sources of Morality

We saw in the preceding section that there are various rules by which we know whether a human action is good or bad. It will be a good action if it be conformable to right order, otherwise it will be a bad action. It remains for us to con-

[1] St Thomas, 1-2, q. 18, a. 9. [2] Gury, 1, n. 26.

sider what elements in an action make it conformable or not with right order. What have we to attend to in order to know whether an action is according to right reason or not ?

There are three such elements, of which sometimes one, sometimes another, sometimes all together, contribute to make the actions in right order or, on the contrary, inordinate. They are the *object*, the *end*, and the *circumstances* of the action.

Point I

The Object

1. By the object is here meant that to which the will primarily and directly tends; that which it determines to do looked at in itself, apart from the circumstances with which the action when done will be clothed; or it is the action considered in the abstract.

2. It is obvious that some objects, in the sense above defined, have an objective morality of their own, and this causes the will which tends towards them to be either good or bad as the object is good or bad. To blaspheme God is an action which no creature of his can will without the greatest inordinateness. The will to commit murder, or to steal another's property, is essentially an evil will, because it tends to an evil object. On the contrary, to love God, to relieve human misery, to show love, honour, and reverence to one's parents, are good actions, because these objects are good, and the will that tends to them is good.

Human actions, then, derive their specific morality from the object, whenever that object is of itself conformable to rational human nature or, on the contrary, not conformable to it. If the object is indifferent, without any objective moral quality, as walking, the action will derive its morality from the circumstances in which the action is performed.

Point II

The End

1. By the end is here understood the reason or motive which induces the agent to act.

The end of all human life is called the *last* end; other motives for action are *intermediate* ends. An end is *primary* if it holds the first place among several, and would be sufficient by itself to induce action; otherwise it is *secondary*.

2. It is obvious that the end or motive which induces the agent to act holds a very prominent place among the sources

of the morality of an action. For it is the object to which the will tends, the prospect of gaining which moves the agent to act; but, as we saw in the last point, the motion of the will takes its moral quality from the object; a will, then, which tends to a good end will so far be good; a will which tends to a bad end will be bad. But the morality of an action resides chiefly in the will, so that a good or bad will, derived from the motive of an action, must necessarily contribute to the goodness or badness of that action. It is the end or motive which sets the will in motion and gives its own moral quality to the action which follows. One, then, who steals money in order to be able to commit adultery commits a sin against justice, induced thereto by a desire to sin against chastity, and as St Thomas, following Aristotle, says, he is more of an adulterer than a thief.[1]

3. The end which the agent has in view may coincide with the natural scope of the action, as when a man eats to support life. The *extrinsic* end is then said to correspond with the *intrinsic* end of the object. Or it may be different, as when a man eats merely for the sake of pleasure; and a man may be moved to action by a variety of subordinate ends, as when he eats to keep up his strength, to be able to work, to obtain the money wherewith to be able to support his family, and so fulfil his duty.

4. If the object of the action be good, and the extrinsic end of the agent be good also, the action will have a twofold merit. And so there is a twofold merit in giving an alms to relieve distress for the love of God. On the other hand, a grievously sinful motive corrupts and makes an otherwise good action grievously wrong. It turns the agent altogether away from God, his last end. And so it would be a mortal sin to give an alms to a poor woman in order to seduce her.

Even a venially sinful motive, if it be the whole or the primary motive for the action, corrupts the whole act and makes it venially sinful; for then a bad object is sought by good means indeed, but the means are infected with the purpose to which they are prostituted. And so one who preaches merely out of vanity commits a venial sin.

If, however, an end be only venially sinful, and be not the whole or primary motive of the agent, the resulting action will be partly good and partly evil. We suppose that the object is good, a partial motive or motives are also good; in this case a partial and secondary bad motive, which is only

[1] St Thomas, 1-2, q. 18, a. 6.

venially sinful, cannot corrupt the whole action. One who preaches principally out of obedience, but more willingly because his vanity is flattered, performs an action which is substantially good, but which is infected with a slight defect.

5. A good motive gives its own moral quality to an indifferent action and makes it good. And so I do an act of charity by depriving a man of a knife with which he was threatening to commit suicide, while the same action done with a view to making the knife my own would be theft.

There is a controversy among theologians as to whether the purpose or intention with which an action is performed can make an action unjust, which, apart from that intention, is not so.

Would a man, for example, be guilty of an act of injustice towards his enemy, and bound to make restitution to him, if he committed a crime, foreseeing and intending that it should be imputed to his enemy, who would be punished for it? Of course he is guilty of a grave sin by giving way to such an act of hatred, and if by any means he procures the false accusation of his enemy he is also guilty of injustice by causing his undeserved punishment. But supposing the false accusation, though foreseen, was in no way procured by him, but was brought about by other causes, would his intention make him guilty of injustice towards his enemy and bound to make restitution to him?

Many theologians affirm that it would,[1] but seeing that the false accusation is indeed occasioned by the crime, but not caused by it, it would seem that the bad intention of the man who committed the crime was incapable of supplying the causal connection between the crime and the false accusation. The intention alone cannot change the nature of the external action. But if this be so, he is not the effective cause of the injury done to his enemy, and he is not bound to make restitution to him.

A good intention certainly cannot make a bad action good. It is not lawful to tell a lie even to save another's life, according to the teaching of Innocent III. Evil must not be done that good may come of it. This is the teaching of Holy Scripture and of the Catholic Church, nor have Jesuits any other doctrine different from that of the Church. Father Dasbach promised to give anyone two thousand florins who would prove in open court that the Jesuits had ever taught that the end justifies the means. Count Paul von Hoensbroech undertook to do

[1] Lugo, *De Justitia*, disp. 8, n. 75.

so, but he failed in his suit when it was tried at Cologne in the spring of 1905.[1]

6. Here we must touch upon a question which has raised a good deal of controversy among divines, and which still divides them. Some, following the great St Augustine, hold that it is a venial sin to eat and to perform other operations of our animal nature for the sake of the pleasure which they give us. Others, on the contrary, hold that the sensible pleasure which accompanies the satisfaction of our animal appetites is good, inasmuch as it is natural and intended by the Author of nature, and so to perform actions which are not wrong in themselves from the motive of pleasure cannot be sinful. If it were not for the sake of the pleasure afforded by eating and by other animal functions many men would abstain from them altogether through disgust. The imperious stimulus of our fleshly appetites and their satisfaction is required for the preservation and increase of the human race. These satisfactions of our animal nature must indeed be ruled and moderated by right reason, the norm of human conduct. If they are thus moderated, they are conformable to man's nature, they are in right order and morally good. This seems to be the teaching of St Thomas;[2] it is the commoner opinion among modern theologians, nor is it involved in the condemnation of the eighth and ninth propositions condemned by Innocent XI on March 2, 1679.[3]

Point III

On the Circumstances of an Action

1. By the circumstances of an action we understand certain accidental conditions, which, as it were, surround (*circumstant*) and complete the substance of the action. There are seven enumerated in the doggerel line—

> Who, what, where, when, by what means, why, and how.

The circumstance indicated by *who* does not signify the agent merely as the author of the action; the action must necessarily be done by someone; but it signifies some special quality in him or condition which affects the morality of the action. Thus if a son strike his father, the circumstance of the parental relation changes the morality of the act, and makes it a sin

[1] *Civiltà Cattolica*, Oct. 7, 1905, p. 3.
[2] *Gont. Gent.* 3, c. 9, n. 1; *Summa*, 2-2, q. 141, a. 1, ad 1.
[3] V. Frins, *De Act. Hum.* 2, n. 505.

not only against justice, but also against the fourth commandment or the virtue of piety. If a thief steals a consecrated chalice, the sacredness of the object makes the sin a sacrilegious theft, a circumstance indicated by *what*. And so of the rest.

It is obvious that circumstances of this kind are sources of morality, for they make the action conformable or not to the norm of morality. It is against right reason to strike anyone unjustly, but it is still more inordinate to strike a parent. At the proper time it is a good action to play in the proper place and with good playmates; if any of these circumstances be wanting, the action becomes so far bad.

2. Some circumstances affecting the intensity, or quantity, or duration of an action add to or lessen its malice, but they do not change its moral species; such circumstances are called *aggravating* circumstances. Although they do not change the moral species of the act, they sometimes make a venial sin mortal, or *vice versa*, as the quantity in theft; they are then said to change the *theological* species of the action. If the circumstances add to the action a special and distinct malice of their own, they change its *moral* species, as the sacred object or place in a sacrilegious theft. Such a theft is not only against justice, but also against the virtue of religion.

3. In order that an action may be altogether and simply good, the object, the end, and the circumstances must all be good; for good indicates completeness and perfection; there is evil in any defect. If all the sources of morality are evil, the action may have a triple malice; as when a thief steals Church plate in order to be able to indulge his vicious propensities. If only one source or circumstance of an action be mortally sinful, the perpetration of it turns the evil-doer away from God and makes the action wholly bad. An accidental and secondary circumstance, when only venially sinful, does not corrupt the whole action; it only lessens its merit. Thus it is a grievous sacrilege to receive Holy Communion in a state of mortal sin; a state of venial sin only makes the Communion less fruitful.

Section III

On Merit

1. It follows from what has been said in the preceding section, that an action will be morally good if the object, end, and circumstances are good. The object, end, and circumstances will be good if they are conformable to man's rational

nature and to the eternal law of God. An opinion was held by some theologians that besides these conditions it is necessary to refer, actually or at least virtually, all our actions to God; otherwise they will at least be venially sinful. These theologians rested their opinion on certain texts of Holy Scripture and on passages from some of the Fathers, especially St Augustine. The principal Scripture text is from St Paul's First Epistle to the Corinthians, x 31: "Therefore whether you eat, or drink, or whatsoever else you do; do all to the glory of God." There are various interpretations of the passage, but the meaning seems plain from the context. St Paul is teaching the Corinthians the duty of avoiding scandal to Jews, Gentiles, and to the Church of God. They must so order their actions, even those that are indifferent in themselves, such as eating certain kinds of food, as not to be a cause of offence to others. Then will their actions all tend to the honour and glory of God, then will they do all things in charity (1 Cor. xv 14). There is obviously no word here which can be legitimately construed into a command to direct all our actions to God by an actual or virtual intention of the will. Such a merely internal act would not tend to edify others, and in the text quoted this is what St Paul is urging the Corinthians to do. Other passages which are quoted in support of the opinion are similarly capable of being explained in a sense which affords the opinion no support. It is indeed a truth, which is insisted on by other theologians, that if an action be honest and good and performed because it is conformable to right order, it is thereby implicitly directed to God, who wills the observance of right order, and who is himself the end to which rightly ordered action tends. In this sense it is true that every good action must be referred to God; but every good action is thus referred to him by the very fact that the object, the end, and the circumstances are good.[1]

2. Something else is required to make a naturally good action supernaturally meritorious. The question of merit belongs to the dogmatic treatise on grace; here it will be sufficient to give something about the subject in outline, in order to round off our treatment of human acts.

Merit in general is a certain value in an action which gives the agent the right to be rewarded by him in whose behalf the action is performed. Merit, then, with God will be a right to be rewarded for one's actions by God. Theologians distinguish between condign and congruous merit. The former

[1] V. Frins, *De Act. Hum.* 2, n. 290.

implies that there is some sort of equality between the value of the action and the reward, so that the reward is due to the agent in justice. If there is not this equality and title in justice, the merit will be only congruous. We can merit condignly an increase of grace, life eternal, and an increase of glory, as the Council of Trent defined.[1] Efficacious graces, by which we receive, preserve, and increase sanctifying grace, and the gift of final perseverance, are the objects of congruous merit.

3. In order that an action may be condignly meritorious, two conditions are required on the part of the agent, two on the part of the action, and one on the part of God.

The agent must be still on his probation in this present life; there is no meriting when man's day is done. He must also be in the state of grace and friendship with God; the actions of one who is out of grace and who is a rebel and an enemy of God cannot deserve any reward from him.

The action itself must be morally good, not bad, as is obvious; and it must be supernatural, elicited by means of grace and from a motive which is rooted in faith. Otherwise it will be merely of the natural order, deserving indeed of a natural reward, but having no proportion to the supernatural end to which we know by faith that man is destined by God.

On the part of God there must be a promise made by him to grant such a reward to such an action. For otherwise, after doing all that we can, we must acknowledge that we are useless servants, who cannot claim anything as due to them in justice from God, their Creator and Lord. He has every claim to our service without our having a strict right to any reward in return. According to the very probable teaching of St Thomas,[2] all the deliberate actions of one who is in a state of grace are either meritorious or sinful. In order to be in a state of grace, such a one must have fulfilled all the duties which bind him under pain of grievous sin, and among these is the obligation of eliciting at the proper times an act of love of God. By such an act the just man refers himself and all he does to God, and thus his good actions are elicited by the help of grace and tend to man's supernatural end, the beatific vision of God. In any case, if we are careful frequently to renew our intention of pleasing God, and with his grace remain free from mortal sin, we may rest in the assured hope that all our good actions are meritorious of life eternal.

[1] Trent, sess. 6, can. 32.
[2] *De Malo*, q. 2, a. 5, obj. 10; in lib. 2, dist. 40, a. 5, ad 6.

BOOK II

ON CONSCIENCE

CHAPTER I

THE NOTION OF CONSCIENCE

1. THE voice of conscience is the authoritative guide of man's moral conduct. Not that the individual conscience is independent of all authority; if the individual conscience is right, it proclaims the duty of submitting to all properly constituted authority, and especially to the supreme and absolute authority of God. It is, as theologians are fond of saying, the herald or ambassador of God to each individual, making known to him and applying the eternal law of God to the conduct of life.

Although the term is also used with other meanings, here conscience signifies a dictate of the practical reason deciding that a particular action is right or wrong. The process by which we arrive at this judgement of the practical reason may be put in the form of a syllogism. The major premise will be some general law of conduct, the minor will be its application to the particular case, the conclusion will be the judgement, which is nothing else but conscience. Thus when a precept has been given by one who is in lawful possession of authority, the dictate of conscience is implicitly arrived at somewhat as follows: I must obey all who command me with lawful authority. A. B. commands me with lawful authority. Therefore I must obey him is the conclusion and the dictate of conscience.

2. Conscience is said to be *certain*, *dubious*, or *probable*, as the motive on which it is grounded is morally certain, doubtful, or only probable.

A *right* conscience is in accordance with the eternal law of morality; an *erroneous* conscience gives a false instead of a true judgement. If the mistake could and ought to have been avoided by the agent who has a false conscience, the conclusion is *vincibly* erroneous; otherwise it is *invincibly* erroneous.

A *strict* conscience is one which is apt to decide that there is an obligation when none exists, or a greater obligation than there really is; a *lax* conscience, on the contrary, is apt to

deny an existing obligation or to make it less than it is in fact; a *scrupulous* conscience without sufficient reason apprehends sin where there is none.

A dictate of conscience which precedes the action, judging it to be right or wrong, is said to be *antecedent;* that which follows an action, approving it as rightly done, or condemning it as wrong and disturbing the inward peace of the soul, is *consequent.*

CHAPTER II

ON THE CERTAIN CONSCIENCE

1. CERTAINTY in general is a firm assent of the mind to something known, without the fear of mistake. In mathematics and in other branches of exact science we can often attain absolute certainty, which rests on the evident truth of the principles which are employed to arrive at it. For anyone who is capable of following the demonstration there can be no manner of doubt that the angles of a triangle are together equal to two right angles. In the science of morality we have frequently to be content with a lower degree of certainty than this; there is often some obscurity about the principles to be applied, and human acts are not the matter of necessary and unvarying law. We have to be content with what is called moral certainty; but this again is of various degrees. I am morally certain of the existence of Berlin, though I never saw the city. Any person who doubted of its existence would be thought to be insane. The grounds on which the judgement that Berlin exists are based are so many and so strong that they leave no room for prudent doubt in the matter. In such cases we have perfect moral certainty. In other cases I may be conscious that mistake is possible but not probable, as when a man has been condemned on evidence which has satisfied a jury of intelligent men. In such cases if there can be no prudent doubt about the justice of the verdict I have moral certainty of an imperfect but real kind. If I could not safely rely in guiding my conduct on such a degree of certainty, I should have to abstain from action altogether. Ordinarily greater certainty cannot be obtained in human affairs.

2. In order to act lawfully and rightly, I must have at least moral certainty of the imperfect kind that the proposed action is honest and right. This degree of certainty will be sufficient, for ordinarily no greater can be had, as we have just seen. It is also required for right action; for if I am not at least to this extent morally certain that my action is right, I am conscious that it may be wrong. In this case I am bound to pause, and satisfy myself that it is right before acting; for if I do not do so my will is ready to embrace what may be wrong

I am ready to do the action whether it is in right order or not. But such a will is malicious; it is not firmly set on doing what is right; and sin is thereby committed.

A subjectively certain conscience then, which tells me without prudent doubt that the action is right, is required for lawful action; " All that is not of faith is sin," as St Paul says.[1] It will be sufficient if we have imperfect moral certainty, as we have seen.[2]

3. If I have this imperfect moral certainty that my action is right, I am justified in acting, and if with such certainty my conscience tells me that I am bound to act, I must do so, even though my conscience be erroneous. For my action is morally good if my will be good. My will is good when it tends to a good object as represented by my intellect, not as it is in itself. But if my will follows my conscience and determines on what it prescribes, my will then tends to a good object as represented by my intellect and is a good will. So that even though my conscience be erroneous, I am justified in following it, and I am bound to follow it when it prescribes any action to be performed.[3]

This is true whenever I have a certain conscience—that is, when I have no doubt or suspicion about the honesty of my action, even though my conscience be erroneous. If I were the wilful cause of my conscience being in error by not taking means to inform it correctly, then any objectively wrong action that I perform is voluntary in the cause, and so far imputable to me, but here and now I must follow my conscience.

I am said to be *bound* by my conscience because it compels me to follow it under pain of doing wrong, committing sin, and being exposed to the pangs of remorse. It binds me also in the name of God, whose will it makes known to me. It speaks, therefore, with the authority of God, it sternly bids me follow his behests, and it reproves me with the authority of a superior if I neglect to follow its promptings. As representing the will of God its authority is greater, as St Thomas teaches,[4] than that of any merely earthly superior.

4. The question as to whether in any particular case a person acted with an erroneous conscience is a question of fact, which only he and God can decide. Still, following approved theologians, we may make use of certain presumptions drawn from the nature of things and from experience. It may be admitted that ignorant and dull people may have

[1] Rom. xiv 23.
[2] St Thomas, 2-2, q. 70, a. 2.
[3] St Thomas, 1-2, q. 19, a. 5.
[4] *De Verit.*, q. 17, a. 5.

an invincibly erroneous conscience concerning the malice of merely internal sins committed in thought only; but we should except efficacious desires to do what is known to be wrong. A person can scarcely know that the external action is morally wrong and be ignorant of the malice of an effective desire to commit such an action.

Again, the first principles of morality, which are certain general axioms of conduct, such as, Do to others as you would be done by, can scarcely fail to be known by anyone who has the use of reason. Even the secondary principles of the moral law, or the precepts of the Decalogue, are usually known by those who have attained the use of reason among civilized men; if in any case there is ignorance of them, it is vincible ignorance, and so more or less culpable. Theologians readily admit the possibility of an invincibly erroneous conscience concerning the application of the general principles of morality to concrete cases. The theological disputes which they chronicle are proof of the fact.[1]

[1] St Thomas, 1-2, q. 94, aa. 4, 6.

CHAPTER III

ON A DOUBTFUL CONSCIENCE

1. WHEN we have some knowledge of a matter which does not amount to a certainty, various states of mind may be distinguished with respect to the mind's inclination to form a judgement about the matter in question. If no reasons are known for either affirming or denying a proposition, or if there are as weighty reasons for one as for the other, the mind suspends judgement, and is said to be in *doubt*. Doubt, then, is the suspending of judgement about a matter apprehended by the mind. A *doubtful* conscience, therefore, will be a suspension of judgement about the lawfulness of some action.

If some slight reason draws the mind in one direction, we have then a *suspicion* about the matter. If there be a good solid reason or reasons for forming a judgement in a particular sense though there is not sufficient ground for certainty, and it is felt that the opposite may be true, the mind then forms an *opinion* on the matter.[1]

Theologians distinguish a *negative* from a *positive* doubt. There is negative doubt when the mind suspends judgement for want of reasons on one side or on the other; if there is an apparent equality of reasons on either side, the doubt is positive. In this chapter we confine our attention to negative doubt, the sense in which the term *doubt* is usually understood in theology. A *speculative* doubt has reference to some question in the abstract apart from present action, as when I doubt whether it is allowed to fish on Sundays, though I have no intention of actually fishing: a *practical* doubt has reference to the lawfulness of an action which there is question of performing here and now.

A doubt *about law* has reference to the law's existence or its interpretation; a doubt *about fact* has reference to fact.

2. It is not lawful to perform an action with a practically doubtful conscience as to whether the action is right or wrong. The reason is obvious; for, as we saw in the last chapter, we must have a certain conscience that the action is right before

[1] St Thomas, 2-2, q. 2, a. 1.

performing it, otherwise sin is committed, and one who has a doubtful conscience has not a certain conscience.

The sin which is committed by one who acts with a practically doubtful conscience as to whether the action is right takes its species and gravity from the doubtful conscience. If I eat meat with a practical doubt as to whether it is not forbidden on that day by the Church, I commit a sin of the same kind and malice as if I ate meat knowingly on a day of abstinence. The reason is obvious from what was said about a certain conscience. The species of a sin and its malice depend upon the mind and will of the agent, and when one acts with a doubtful conscience the will is prepared to commit a sin of the kind apprehended, and by that very act it commits the sin.

3. As long as the conscience is in a state of practical doubt, one may abstain from action altogether, or do what in any case would be licit. There is no danger of sin if, while doubting whether it is allowed to eat meat, one abstains from food altogether, or eats only what is allowed on days of abstinence. The axiom—*In dubio pars tutior est sequenda*—is to be taken in this sense. An effort may also be made to resolve the doubt by making inquiries of those who know, by consulting authorities, or by making use of certain principles of conduct which are approved by law and right reason. In this manner a certain conscience may frequently be formed.

4. There are various principles or axioms suitable for the purpose of forming one's conscience when in doubt. They are for the most part taken from canon law, but they are also used in questions belonging to the forum of conscience.

In dubio melior est conditio possidentis.—Possession is properly a physical fact, and consists in the corporal detention of a thing. In a wider sense rights are objects of possession, as a right of way, or the right to one's liberty; so that if one's liberty has hitherto been unrestricted, it is said to be in possession. The very fact of possession gives a right to continue in possession unless there is an adverse and stronger claim. There is also in the possessor a presumption of title to possess, for all men are jealous of their rights, and usually do not allow their property or rights to be held by others as owners. If, then, I am in possession of some object or right, and a doubt supervenes as to whether I am entitled to possession in the case or not, the question may be solved in the forum of conscience as it would be in a court of law, by applying the maxim —*In dubio melior est conditio possidentis.*[1]

[1] Cf. *Irish Eccles. Record*, Sept. 1899.

If, then, a doubt arises as to whether I have said my breviary, I must say it, for the law is in possession; if on the contrary a doubt comes into my mind as to whether I have taken food after midnight, I may go to Holy Communion, because my right to receive is in possession.

5. *In dubio standum est pro eo pro quo stat praesumptio.* A presumption is a probable conjecture about an uncertain event. The conjecture is such as would be formed in the circumstances by a man of ordinarily sound judgement and prudence. This is called a *praesumptio hominis* to distinguish it from a *praesumptio juris*, which the law itself sanctions in certain circumstances. Thus, according to the old canon law, if the parents of a boy and girl promised them in marriage and they did not express dissent, there was a *praesumptio juris* that they gave their consent, and they were reputed betrothed to each other.[1] This *praesumptio juris* admits, indeed, of proof to the contrary; in cases where proof to the contrary is not admitted, there is *praesumptio juris et de jure*, as it is called.

When in doubt, I can frequently form my conscience by the aid of this axiom. If, for example, I am in the habit of saying my little hours after breakfast, and some evening a doubt occurs to me whether I said them on that day, I need not say them then, the presumption being that I said them in the morning as usual, and—*In dubio standum est pro eo pro quo stat praesumptio.*

6. *In dubio factum non praesumitur sed probari debet.* Similarly, *Nemo praesumitur malus donec probetur.* These axioms are understood of some principal fact, the fact of baptism, for example, or the commission of a crime, which obviously should not be presumed. If on the contrary the principal fact is certain, and a doubt arises as to some accessory circumstance, then other axioms should be used to guide the conduct: as, *In dubio omne factum praesumitur recte factum;* or, *In dubio praesumitur factum quod de jure faciendum erat;* or, *In dubio standum est pro valore actus.* So that if I am certain that I baptized a child, but begin to doubt whether I anointed the head with chrism, according to the ritual, I am not bound to supply the ceremony afterwards.

[1] Cap. un., de despon. impub. in Sexto.

CHAPTER IV

ON THE PROBABLE CONSCIENCE

1. A SUBJECTIVELY certain conscience that the proposed action is lawful is required before performing any action, as we have already seen. A great difficulty—a difficulty which has to be faced by all moralists—arises from this principle in consequence of the uncertainty as to whether many actions in the concrete are lawful. One need not consult the works of moralists to find out what difference of opinion there is among experts on many practical questions of morals. It will be sufficient to consult one's own experience. In the conflict of rights and duties, and in the obscurity which exists as to the application of moral principles to concrete cases, we are frequently at a loss as to what course duty prescribes. The cases which are constantly submitted to the decision of courts of law, but which also belong to morality, illustrate the familiar truth that opinion and not certainty is very often alone attainable in the field of conduct. But if this be the case, what is a conscientious man to do? He finds himself in a difficulty; what the right thing to do under the circumstances may be is not clear. A young man has promised to marry a girl somewhat his inferior in social position; they are both satisfied that the union would be a happy one for both, but the young man's parents will not hear of the thing, and strictly forbid him to see the girl again. Must he obey his parents, or may he follow his inclinations and keep his promise? He consults those whose knowledge and judgement he respects, and they give him contrary decisions. He goes to recognized authorities on morals, and finds the same difference of opinion.

This example is but a type of innumerable questions which constantly arise in everyday life. Is it possible to lay down any universal principle for the solution of such doubtful cases, so as to be able to act with a certain conscience?

Catholic theologians answer this question in the affirmative, but they are not agreed as to what the principle is. A probabiliorist would tell the young man that he must obey his parents and break off the engagement unless the opinion that he may marry the girl in spite of the prohibition is distinctly

more probable than the opposite. An equiprobabilist would say that he may marry the girl if the weight of opinion is fairly equal on either side. A probabilist would maintain that he may marry her if there is a solidly probable opinion which favours that course. The terms are technical, and their meaning should be carefully studied.

An opinion, as we have already gathered from St Thomas, is an adhesion of the mind to one proposition, but with a consciousness that the opposite may be true.

A probable opinion is one which rests on good and solid grounds, such as would incline a man of prudence and judgement to embrace it. If the intrinsic reasons of the opinion are the grounds for embracing it, we have an intrinsic probability; if authority is the ground, we have an extrinsic probability.

A more probable opinion is one which rests on weightier reasons than the opposite, but which leaves the opposite still probable.

A very probable opinion rests on such solid grounds that the opposite is not considered solidly probable.

A morally certain opinion excludes even slight probability in the opposite; it is an adhesion of the mind to a truth without any fear of mistake.

2. In this difficult question, the Catholic Church so far has been content to condemn extreme views, and allows her children to follow any of the moderate systems mentioned above. Alexander VIII[1] condemned rigorism, which required direct moral certainty in all cases about the lawfulness of an action, and denied that it is ever lawful to follow an opinion which is very probable among several. Laxism was condemned by Innocent XI, since it taught that one might lawfully act on a slight probability.[2] The systems which are known as Probabiliorism, Equiprobabilism, and Probabilism all have their adherents; the Catholic moralist is free to follow whichever he wishes.

To us it seems that probabilism is the true system, and if it be rightly understood, as it is taught by its moderate supporters, and not as it is misinterpreted by its opponents, we are convinced that it will recommend itself to practical common sense.

Its maxim may be formulated thus: When there is only question of committing sin or not, it is lawful to follow a solidly probable opinion, even though the opposite may be more probable.

[1] Prop. 3, condemned December 7, 1690.
[2] Prop. 3, condemned March 2, 1679.

The wording of the formula should be carefully weighed. The words " when there is only question of committing sin or not " limit the application of the principle to cases where the only question is whether by following such a course sin will be committed because a certain law, human or divine, will be broken. Probabilism, then, cannot be applied to cases where the validity of an act is in question, where some end must be obtained, or where there is question of the certain right of some other person which must be respected. In all these cases we are bound to safeguard the end by taking means that are sure and not merely probable. These are not so many exceptions to the use of probabilism; there is a certain obligation to use secure means to obtain the end in view in such cases, and so there can be no question as to whether probabilism is applicable or not. This will explain why Innocent XI condemned a proposition which asserted that it is not unlawful for a minister of the sacraments to follow a probable opinion about their validity when administering them; and another, which taught that a judge might use probabilism in giving sentence in a court of law; and a third, which excused an infidel who followed a probable opinion and remained in infidelity.[1] In all these cases there is not merely question of sin, but the certain rights of others are at stake, or there is question of an end which cannot lawfully be exposed to risk.

Again, the words " it is lawful to follow a solidly probable opinion " should be noted. It is not a question as to what is more perfect, what the noble and generous thing to do may be. The rule merely asserts that there is no obligation under pain of sin to follow the more perfect course, if in the case there be one.

Finally, the words are added " even though the opposite may be more probable." For the greater probability of the other view does not make it certain, nor is the supposed greater probability a sure guarantee that the more probable view is the more true. It very frequently happens that an opinion which is considered more probable at one time is thought less probable or altogether improbable at another. Moreover, degrees of probability are very difficult to determine. What seems more probable to one theologian seems less so to another, or even to the same at a different time. And even if it be granted that one opinion is certainly and absolutely more probable, the opposite may for all that remain solidly prob-

[1] Decree March 2, 1679, props. 1, 2, 4

able. With these provisos the proof of the thesis is not very difficult.

3. Whenever there is a solidly probable opinion that a particular action is lawful, there is no certain law forbidding one to perform it. But it is lawful to do what no certain law forbids. Therefore when there is only question of committing sin or not, it is lawful to follow a solidly probable opinion even though the opposite may be more probable.

The major premise of this syllogism is obvious. No opinion can be probable which has a certain law against it. The certain law imposes a certain obligation. On the other hand, if an opinion is probable and acknowledged as such by five or six experts, good, prudent, and learned men, it is impossible that there should be a law contrary to the probable opinion. Or if there is such a law, the law cannot be sufficiently promulgated, or else it would be known to the experts. But a law which is not sufficiently promulgated does not bind; ignorance excuses from its transgression. The minor premise, too, is clear. We are at liberty to do what no certain law prohibits. If indeed I doubt whether an action is forbidden, I am bound to inquire and satisfy my conscience on the point. But whenever there is a probable opinion, this inquiry has been already made by experts, and with the result that no law forbidding the action can be discovered, otherwise the opinion will not be probable. The conclusion then is certain.

Therefore in cases where there is a probable opinion, or a positively doubtful conscience, I may arrive at a certain conscience required for lawful action by reasoning implicitly somewhat as follows: The opinion is probable that this action which I am contemplating is lawful—for example, marrying according to my promise a good and suitable person in spite of the prohibition of my parents which indeed does not seem to be reasonable. But if this is so, there is no law forbidding me to do it; I violate no obligation in marrying her. Therefore I may marry her.

4. The proof of probabilism from what we must call at least the toleration of the Church for some centuries will perhaps appeal still more strongly to Catholic minds.

The guardianship of faith and morals has been committed to the Church by her divine Founder. He has promised that she shall not fail in the task committed to her even to the end of time. But if a false doctrine is widely held and publicly taught for some centuries in the Church, and she does not condemn it, does not protest against it, the promise of Christ

fails to be effective, which is impossible. So that probabilism, which has been widely held and publicly taught for some centuries as a theory of morals without being condemned by the Church, cannot be a false system.[1] A third argument may be drawn from the approbation of the works of St Alphonsus Liguori by the Holy See. The decree of May 18, 1803, on the revision and approbation of the works of St Alphonsus with a view to his beatification, gives a list of his works and expressly states that after careful examination nothing reprehensible was found in them. Among the works mentioned is a dissertation on the moderate use of a probable opinion when it conflicts with a more probable opinion on the other side, published in 1755. In this dissertation St Alphonsus clearly and ably defends and proves probabilism; he never withdrew or corrected this dissertation, though to save his Congregation and the doctrine he afterwards modified the statement of his views. He followed probabilism in his choice of opinions while writing his great work on moral theology which subsequently, though he admitted corrections in details, remained substantially the same.

5. It has been already pointed out that, although we may lawfully adopt and follow a probable opinion, there is no obligation of doing so, and it will frequently be more perfect to follow an opposite opinion. It is not intended to propose probabilism as the ideal of Christian conduct; we go to ascetical writers and elsewhere for that.[2] Probabilism is especially an instrument of moral theology, to be wisely and prudently used by the confessor in the confessional, as the doctor uses his medicines in the sick room.

6. Theologians warn us that only experts can judge of the intrinsic probability of an opinion. Others must be content to be able to discover extrinsic probable opinions. They can do this by consulting approved authors. If they find that an opinion is held as probable by five or six authors of repute, and it has not become obsolete by new legislation, by decrees of the Holy See, or by the progress of theological opinion, they may act upon it as solidly probable. The Sacred Penitentiary, July 5, 1831, declared that a professor of theology or a confessor might follow in practice the opinions of St Alphonsus. In thus adopting extrinsically probable opinions with regard to conduct, the priest or the layman only does what anyone

[1] St Alphonsus, *Dissertation*, anno 1755, n. 10.

[2] Cf. Rodriguez, *On the Practice of Christian and Religious Perfection*, i, c. 8.

not skilled in law would do in a difficult legal case—he would consult an expert whom he could trust.

7. A limitation to the use of probabilism is mentioned by theologians. When one has decided on any course of conduct, he must loyally adhere to the consequences which the decision involves. He must not use a probable opinion to gain an advantage, and then in the same matter adopt the contrary opinion in order to shake off a burden. And so when a probable opinion has been adopted in favour of the validity of a will in my behalf, I cannot also adopt a contrary opinion that the will is invalid and refuse to pay the legacies.

CHAPTER V

ON THE SCRUPULOUS CONSCIENCE

1. A SCRUPLE is a groundless fear that there is sin where there is none. Hence a scrupulous conscience (the term is ordinarily used of the habit, not of the single act) is one which from some frivolous reason judges that a harmless action is sinful. A person, moreover, is not said to be scrupulous because of a scrupulous conscience in a single instance; the term is used of one who, either in some matter or in all his actions, is apt to be disturbed with unfounded scruples.

2. An upright, straightforward, and well-balanced conscience is what it is desirable to have, and so a scrupulous conscience is in itself a bad habit. A scrupulous conscience may indeed be useful for a time to purify the conscience, and to make it more delicate and sensitive to even the appearance of evil; it is sometimes permitted by God for this and other reasons. But if it continues for a long time it causes great trouble of mind, injures the health of body and soul, and sometimes drives its poor victim to desperation, so that he gives up all attempt to be good, or even loses his senses.

3. The confessor, then, should know how to recognize a scrupulous person, what the causes of scruples are, and what are the suitable remedies in particular cases.

The prudent confessor will not at once believe a penitent to be scrupulous merely because he says that he is. Some people who are anything but pious think that it is a fine trait of character to be scrupulous, or they honestly think that they are scrupulous for want of self-knowledge, and tell the confessor so. He would obviously make a great mistake if he applied the rules for scruples to such cases. Nor can the confessor safely conclude that a penitent is scrupulous because he mentions in confession minute faults which common penitents hardly trouble themselves about. He may have before him a soul of great purity of conscience and great sanctity, who is in no sense scrupulous. Until he has heard a penitent's confession more than once the confessor will usually suspend his judgement. When the penitent keeps confessing things which are not sinful, when he says that he is troubled with doubts and

anxieties about his actions, when he is not satisfied with his confessions but keeps coming back, or running from one confessor to another; when he will not follow the advice the confessor gives him, but remains obstinately attached to his own will, the confessor may usually conclude that his penitent is really scrupulous.

4. If he can find out how the scruples arose, the confessor will sometimes be able to apply a suitable remedy at once. They may arise from a variety of causes: from reading ascetical or theological books which are too rigorous or which are not suited to the person's state of conscience; from associating with scrupulous people and contracting their malady; from a naturally weak judgement or from bad health; from immoderate and indiscreet fervour and spiritual pride; from the temptation of the devil, who wishes to ruin his victim, and from the permission of God, who for his own wise ends permits the evil for a time.

5. The confessor will then seek to apply a proper remedy. He may ask the scrupulous penitent whether he is prepared to follow his advice and direction. If the penitent will not do this, but goes from one confessor to another, the confessor will be able to do no good with him, and had better tell him to find someone whose directions he will follow. With one who trusts him and tries to follow his advice, the confessor should be kind and patient; he should give short, clear rules to the penitent, without going into further explanations; he should tell him to despise his scruples and to go against them, boldly to do what he groundlessly imagines to be sinful; as of course he is justified in doing, for he knows that his fear of sin in the matter is an idle scruple. The confessor should tell him not to mention his scruples in confession, and when great harm seems to threaten the penitent from his scruples he may tell him not to say anything about them, even if on occasions he has really committed sins; for scruples may be a valid reason for not making a full confession. The confessor will exhort him to keep body and soul fully occupied in interesting work and never to be idle; an idle brain is the devil's workshop.

Scruples commonly have reference either to past confessions, suggesting that they were not properly made, and were bad, or to temptations against some virtue, as faith or purity; or to one's actions in general, insinuating that they are sinful because not done with a proper motive, or for some other reason. With regard to the first class, the confessor will ask

the penitent whether he is certain that he left out of his confession some grave matter, or that it was sacrilegious. Unless he can say that he is certain, he will tell him not to think of the past, to leave it with our good God, but to direct his thoughts to the present and future. Even if he says that he is certain that something serious was left out, or that he had not proper sorrow for his sins, the confessor after once or twice hearing him will forbid him to mention the past again.

One tempted against faith, purity, charity, or any other virtue, should be told that temptation is not sin, that sin is in the free consent of the will to evil, and that the best way to conquer such temptations is to despise them, to think as little as possible about them, and not to mention them in confession.

The confessor should tell a penitent who through scruples thinks he commits sin in every action to act boldly and fearlessly, that he may do whatever is not obviously forbidden, and that it is impossible for one who wishes to serve God to commit sin, especially grave sin, without being well aware of it.[1]

[1] Reuter, *Neo-Confessarius*, n. 262.

BOOK III

ON LAW

CHAPTER I

THE NATURE OF LAW

1. A LAW in general is a rule of conduct, but the term needs to be defined more exactly in order to mark it off from *precepts* and *counsels.*

A law, then, in the strict sense of the word, is, according to St Thomas, an ordinance of the practical reason for the common good, promulgated by him who has care of a society.[1]

It is said to be *an ordinance of the practical reason,* for a law orders human actions with a view to a certain end, but to order and select proper means toward an end belongs to the reason; and since the ordering in question has reference to practice and is imposed by authority, it is attributed to the practical reason. Law, then, begets an obligation in the subject, and in this differs from a *counsel.*

For the common good indicates the end of all good laws.

By him who has care suggests the source of law which can only be one who has authority over the whole community. Regulations made by subordinate authorities are called in English *by-laws,* in ecclesiastical language, *statutes.*

Of the society.—These words imply that the subject of law is not a single person or a family; a law is made for a community more or less numerous.

Promulgated.—Promulgation is the publication of the law by legitimate authority with a view to imposing an obligation. Some sort of promulgation is required in order that subjects may know of the existence of the law and the time when it begins to bind. In English legislation the time when a law will begin to take effect is often set down in the law itself; otherwise it begins to oblige when it receives the royal assent, by which act it is also promulgated.

There used to be a controversy as to what sort of promulgation is necessary in order that ecclesiastical laws may be

[1] St Thomas, 1-2, q. 90, a. 4.

binding. Many canonists maintained that in this matter canon law followed the civil law, which required that a new ordinance should be promulgated in the different provinces of the Empire, and should begin to bind after a period of two months. In recent times the opinion has become prevalent that authoritative publication in Rome is, by the very fact, promulgation for the whole Church. This is certainly sufficient if the Supreme Pontiff makes known his intention to bind the whole Church by mere publication in Rome, as Leo XIII seems to have done in his legislation about forbidden books.[1] Not unfrequently there is a special clause in ecclesiastical laws which defines the mode of promulgation, as in the decree *Tametsi* of the Council of Trent (sess. 24, *De Ref. Matrim.*, c. 1), in the Constitution of Clement XIV, *Dominus ac Redemptor*, July 21, 1773, and in the Constitution of Leo XIII, *Romanos Pontifices*, May 8, 1881. Sometimes a new law is sent to the Bishops, whose duty it is to see to the execution of the Pontiff's will.

The new Code of Canon Law prescribes (Can. 9) that laws made by the Apostolic See are promulgated by their publication in the official *Acta Apostolicae Sedis*, unless in particular cases some other mode of promulgation is prescribed; and they only begin to have force after the elapse of three months from the date of the number of the *Acta Apostolicae Sedis* in which they are published, unless from the nature of the matter they bind immediately or a shorter or longer term is specially and expressly laid down in the law itself.

The Fathers of a Plenary or Provincial Council themselves determine the mode and time of promulgation of the decrees of the Council after revision by the Sacred Congregation of the Council (Can. 291); a Bishop determines the mode of promulgation of his own laws in or out of Synod (Can. 335, sec. 2).

2. From what has been already said it will be clear how a law differs from a precept. A law is a regulation made by a public authority for the common good, and directly affects a definite territory, and indirectly those who live therein. It is stable and permanent, as is the society for whose good it is made. A precept, on the other hand, is imposed also by private authority for the good of the individual, and directly affects the person—*haeret ossibus*. Regularly a precept is limited in time and expires with the death or removal from office of him who gave it.

[1] *Index librorum prohibitorum*, 1900.

3. Laws are *divine* or *human*. Divine law is either *natural* or *positive*. The natural law is promulgated in the rational nature of man, and is a participation in human reason of the eternal law of God, which bids us observe right order, and forbids its disturbance. Positive divine law is made known by revelation.

Human law is *ecclesiastical* when made by the authority of the Church; *municipal* or *civil* when it is the ordinance of the civil ruler. The term *civil* is frequently restricted to the Roman civil law.

Other divisions of law and their application will be clear from the chapters which follow.

CHAPTER II

ON THE POWER OF MAKING LAWS

1. No body of men could live together in peace without being subject to a supreme authority whose function it is to look after the common weal by defending the rights of all, repressing and punishing crime, and taking measures in the common interest which are beyond the power of private enterprise. God, from whom all power is derived, has willed that there should be a separate supreme spiritual authority to look after the spiritual welfare of mankind, and another to look after its temporal welfare. As Leo XIII teaches, in his Constitution *Immortale Dei*, November 1, 1885: "The Almighty, therefore, has appointed the charge of the human race between two powers, the ecclesiastical and the civil, the one being set over divine, and the other over human things. Each in its kind is supreme, each has fixed limits within which it is contained, limits which are defined by the nature and special object of the province of each, so that there is, we may say, an orbit traced out within which the action of each is brought into play by its own native right. . . . One of the two has for its proximate and chief object the well-being of this mortal life; the other the everlasting joys of heaven. Whatever, therefore, in things human is of a sacred character, whatever belongs either of its own nature or by reason of the end to which it is referred, to the salvation of souls, or to the worship of God, is subject to the power and judgement of the Church. Whatever is to be ranged under the civil and political order is rightly subject to the civil authority. Jesus Christ has himself given command that what is Caesar's is to be rendered to Caesar, and that whatever belongs to God is to be rendered to God."

The spiritual and the civil power use their authority to make laws, and in this chapter we propose briefly to indicate those who have legislative authority in the Catholic Church.

2. The power of making laws resides in the supreme authority in the Church, and in any person or body of men to whom the power has been communicated.

(*a*) The Pope, by the primacy of jurisdiction which he receives from God, is the supreme lawgiver in the Church.

He exercises this function either alone or in a general council. Sometimes he acts in his own name, sometimes he uses one of the Roman Congregations for his purpose. The Congregation of Sacred Rites (S.R.C.) has received from the Pope authority to make laws for the whole Church in liturgical matters which have been entrusted to its supervision.[1]

The general decrees, then, of the S.R.C. bind the whole Latin Church by their own authority. The same must be said of special decrees which are comprehensive—*i.e.*, which merely interpret the meaning and application of a pre-existing law. Decrees made in answer to special questions, if they are not promulgated authentically, and especially if they are extensive—*i.e.*, if they contain a new provision of law—bind the parties concerned, but probably impose no obligation on others.

(*b*) The Bishops, assembled in national or provincial councils, or separately in their respective dioceses, make laws for their own subjects.[2] A Bishop's legislative authority is usually exercised in his diocesan synod; other ordinances are looked upon rather as precepts than laws, unless the Bishop, after consulting his chapter, specially expresses his mind to the contrary. By modern ecclesiastical law, an Archbishop has no legislative authority over his suffragans or their dioceses. He can hear appeals from their subjects, and in special cases he supplies for their neglect of duty (Can. 274).

Bishops, inasmuch as they are subject to the common law of the Church and the decrees of the Holy See, can make no law which is contrary to these.

(*c*) Religious Orders have power to make laws for their own members. The power is exercised according to the special Constitutions and Rules approved by the Holy See for each Order. Orders of women, however, have no legislative authority, though the superioresses, by virtue of what is called dominative power, can of course give binding precepts to their subjects.

(*d*) Parish priests, since they have no jurisdiction in the external forum, are incapable of making laws.

It belongs to canon law to treat more fully this and similar matters connected with laws; nor is it any part of the duty of a moral theologian to inquire what is the legislative authority in civil matters.

[1] Pius IX, May 23, 1846; Can. 253. [2] Can. 335.

CHAPTER III

THE MATTER OF LAW

1. It is the duty of the legislative authority to promote the common good by wise, just, and useful laws. It should apportion burdens according to the principles of distributive justice, so that they may not press unduly on the shoulders of particular classes and persons. Over-legislation should be avoided; something must be left to private initiative; individuals and families should be allowed as much freedom as is compatible with the public welfare. Even prohibitive legislation will be kept within the bounds of moderation in a well-ordered State; not all evils will be forbidden, but some even of the more serious breaches of the moral code will be tolerated by the State, lest by trying to force people to be good greater harm may ensue. What is conducive to the common weal will be the legislator's guide in the framing of laws.[1]

2. Human laws cannot be contrary to the divine law, from which they derive all their force and efficacy, so that a law which prescribes something morally wrong is no law at all, and cannot exert any binding force on the conscience. There is nothing to prevent human law prescribing or forbidding what is already of obligation or forbidden by the divine law. A parent is bound by natural, divine, and human law to bring up his children properly; theft is forbidden by human and divine law.

3. An obligation which is left indeterminate by the divine or natural law may be further determined by human law as to time, place, frequency, and other circumstances affecting the observance of it. And so the civil law determines at what age children attain their majority, and which near relatives are responsible for the support of the indigent poor; the Church, too, determines the limits of the impediment of consanguinity as affecting marriage, the times for the reception of the sacraments of Penance and Holy Communion, and many other obligations left indefinite by divine or natural law.

4. An act which in itself is indifferent may in certain circumstances become opposed to the public welfare, or on the

[1] St Thomas, 1-2, q. 96, a. 3.

contrary may conduce to it. The legislative authority may, for the public good and to further the end for which the society exists, prescribe or prohibit such acts according to circumstances. In itself it is indifferent on which side of the road a carriage is driven, and whether it passes another on the right or on the left; but where traffic is considerable it is necessary that these matters should be regulated by law or custom. To eat meat on Friday is in itself as lawful as to eat it on any other day, but the Church has forbidden it in order that her children may exercise themselves in the practice of temperance and mortification of the sensual appetite. When an indifferent act or one which already belongs to some special virtue is commanded by the legislator from a motive which belongs to some other virtue, the act commanded henceforth belongs to the virtue which furnished the motive, if the legislator so wills. And so, inasmuch as the Church prescribes fasting Communion out of reverence for the Blessed Sacrament, one who receives not fasting is guilty of irreverence and sacrilege, though, apart from the Church's law, to receive Holy Communion not fasting would not be sinful. For just as an action may get a special moral quality from the end for which the agent performs it, so the motive of the legislator may give a distinct moral quality to an act which he commands. The same holds good of prohibitive laws.

5. Acts of heroic virtue which would be impossible for the body of the people cannot ordinarily be prescribed by law. A law must be morally possible of observance for the general body of the subjects. When, however, the public good requires acts of heroism, and especially when a state of life has been voluntarily assumed which demands heroism, acts of heroic virtue may then become matter of law. The soldier must obey orders at the risk of life, and the Church is justified in prescribing celibacy to all who freely choose to enter sacred orders. If anyone feels that he cannot observe the law, let him not volunteer for the service.

6. Merely internal acts which do not conduce to the common good of civil society, cannot be the subject-matter of civil law. The Church's end is the spiritual welfare of her children, to which internal acts contribute much; and so, many theologians hold that the Church may prescribe merely internal acts. She certainly has the power of prescribing internal actions concomitantly, as it is said, when they form part of a whole human action. Therefore, in commanding her children to hear Mass on Sundays, she bids them have the necessary

intention, without which a human act is impossible. The Church also has authority over internal acts when she determines the divine law about articles of faith, declaring that such a truth is to be believed, or that acts of faith, repentance, or charity are to be elicited at certain times. Moreover, in the internal forum of Penance the priest can impose internal acts of virtue as satisfaction for sins confessed. Religious, too, who have voluntarily by vow subjected themselves to their superiors, are bound to obey the rules and constitutions which prescribe times for meditation and prayer. All theologians are agreed on these points. But apart from these special cases, it is the more common teaching of theologians and canonists that the Church has no power to make laws about merely internal acts. For such acts are not cognizable in the external forum of the Church, and, since the legislative power is co-extensive with the judicial, it would seem that she cannot make laws about them.[1]

[1] Inn. III, c. 34, de Simonia; Trent, 24, c. 1, de Ref.; St Thomas, 2-2, q. 104, a. 5.

CHAPTER IV

THE SUBJECTS OF LAW

1. ALL those are subject to the law and bound to yield it obedience who live under the authority of the legislator. And so, inasmuch as the natural law is derived from the eternal law of God, and is nothing else than the rule of action suited to human nature as such, all who participate in human nature are subject to the law of nature. Infants and madmen who do something forbidden by the law of nature are indeed excused from formal sin for want of knowledge, but anyone who wilfully provokes them to such actions commits sin by their means in so doing.

2. Human law is intended to be a guide for reasonable human beings, and so the habitual use of reason is required in order to be subject to human law. Imbeciles and children who have not yet attained the use of reason are not subject to positive law. Regularly the Church presumes that at seven years of age children attain the use of reason, and inasmuch as the law provides for what ordinarily happens we may say that at seven years children begin to be obliged to hear Mass and to fulfil the other duties of the Christian life (Can. 12). It is well that they should be accustomed to obey such laws as those of hearing Mass and abstaining even earlier. There are special reasons for deferring the obligation of fasting, and sometimes for deferring for a time that of receiving Holy Communion (Can. 859).

Drunken people remain subject to the Church's law, for habitually they have the use of reason.

3. Men become subject to the Church by Christian baptism, and so all baptized persons, and these alone, are subject to the laws of the Church. Heretics and schismatics who are validly baptized are *per se* subject to the Church's laws, but a probable opinion teaches that it is not the Church's intention to bind them by such of her laws as proximately regard the sanctification of individual souls rather than the public good. Such are the laws of keeping certain days holy, of abstaining, of fasting, of hearing Mass on Sundays. Harm rather than good would follow from intending these laws to bind heretics and schismatics.

4. Particular ecclesiastical laws are made for particular countries, or provinces, or dioceses, by the competent authority, and bind all subjects living within the territories in question. One is subject to local law by having a domicile or quasi-domicile in the territory for which the law is made. To constitute a domicile in ecclesiastical law, two conditions are required. The person domiciled must have taken up his abode in a parish, or quasi-parish, or at least in a diocese, vicariate apostolic, or prefecture apostolic; and this abode must be joined either with the intention of perpetually remaining there, if they are not called away, or with the actual dwelling there for ten years.

A quasi-domicile is acquired by taking up his abode in the place as above, joined with the intention of remaining there for the greater part of a year if not called away, or with the actual dwelling there for the greater part of a year.

A domicile and a quasi-domicile are lost by those who have them leaving their abode with the intention of not returning there; but wives always retain the domicile of their husbands unless they are lawfully separated from them, and minors that of their guardians (Can. 13, 92, 93, 95).

Whoever, then, resides in a place, having therein a domicile or quasi-domicile is subject to the particular laws of that place. Contracts, too, are governed by the law of the place where they are made, and whoever commits a crime is amenable to the law of the country where it is committed.

While outside the limits of the territory in which one is domiciled, there is no obligation to obey the particular laws of that territory, for the law is territorial and does not bind beyond the limits of the territory for which it was made.

A stranger (*peregrinus*), or one who has a domicile in another place, but at present is staying elsewhere, is not bound by the particular laws of the place where he is staying; for he is not subject to their authority by having either a domicile or a quasi-domicile in the place. And so, if an English Catholic happened to be in Dublin on the feast of St Patrick, which is kept there as a day of obligation, he would not be bound to hear Mass; nor would a Dublin man who happened to be staying on that day in England. However, a stranger staying in a place where the common law of the Church is observed is bound to act according to its provisions, though there may be a dispensation from its observance in the place where he has his domicile. And so an English Catholic staying in Rome should abstain from flesh meat on Saturday as well as on Friday in Ember

week. Moreover, any contracts that he may enter into or crimes that he may commit subject him to the laws of the country where he is staying in those respects (Can. 14).

Homeless people (*vagi*) are bound by the general and particular laws which are in force in the place where they are staying (Can. 14, sec. 2).

Regulars and their monasteries are exempt from episcopal authority, and so in general are not subject to the laws made by the Bishops for their dioceses. There are, however, many exceptions to this general rule, for in spite of their exemption regulars have in special cases been subjected by the Holy See to the ordinary or else delegated authority of diocesan Bishops. The special cases are treated of by canonists (Can. 615).

CHAPTER V

ON THE ACCEPTANCE OF A LAW

1. LEGISLATIVE authority in the Church is derived from God and not from the people, so that an ecclesiastical law receives its binding force not from the will of the people but from the will of the legislator, made known by the promulgation of a law. An ecclesiastical law, then, binds those for whom it is made, independently of the acceptance of the law by the people (Can. 218).

2. Practically, however, if a law is not accepted or acted on by the people, it may in various circumstances be said no longer to be of obligation. If the law was never put in force, and acts contrary to it were known to and connived at by authority, the law may be said not to bind for want of acceptance. Really it does not bind because the ruler does not urge it, but tacitly consents to its non-observance. Similarly, if the greater and saner portion of a community do not observe a law, it may be presumed that it is not the legislator's will to bind the rest. It is obvious that there is question here only of disciplinary laws, for if the law decides matters of faith, obedience is at once imperative.

3. It is the duty of Bishops to make known to their people and to execute new laws made by the Holy See, especially if the new laws were sent to them for the purpose, or if it is thought likely that they will be useful to the diocese.

If, however, a Bishop thinks that a new pontifical law is not suited to his diocese, he not only may, but it is his duty to represent the matter to the Holy See, and in the meantime the obligation of the law is suspended. If the Holy See, after weighing the matter, insists on the observance of the law, obedience must be rendered to lawful authority.[1]

[1] Ben. XIV, De Synodo, 9, c. 8.

CHAPTER VI

ON THE OBLIGATION OF LAW

1. By obligation we here understand a moral necessity arising from a law to do or to forbear doing something. It is said to be a *moral* necessity, not *physical*, because it does not subject the person bound to physical but moral constraint to act according to the law; he must act thus if he would do his duty, if he would act reasonably, if he would escape guilt, sin, and punishment.

In a slightly restricted sense a moral obligation is said to be imposed on those subject to a law which binds in conscience under pain of committing sin. Such a law is called a *moral* law. If the intention of the legislator is not to bind the conscience under pain of sin, but only under pain of paying the penalty imposed, the law is called a *penal* law. If the law binds under pain of sin, and also imposes a penalty on transgressors, it is called a *mixed* law.

2. The obligation of a law depends primarily on the will of the legislator. For we are here considering not the natural law, which is imposed by the very nature of things and by God, but positive law, which depends on the will of the legislative authority for its existence, and so also for the kind and quantity of obligation which it imposes. The legislator may intend to impose a moral obligation under pain of sin, for God commands us to obey our lawful superiors when they impose a strict precept on us, and disobedience to them is an offence against him and a sin. If the matter is of sufficient importance, he may intend the obligation to be serious, so that a breach of it would be grievously sinful, or he may intend it to be only slight, whose breach would be a venial sin. It would be unreasonable to intend to bind under pain of grave sin in a light and trivial matter, and so a human legislator cannot do this. The legislator may also, if he choose, intend to bind only under pain of paying the penalty, and then the subject in case of violation of the law will only be bound in conscience to do this. The kind of obligation, then, which a law imposes depends principally on the will of the legislator, but secondarily also on the matter of the precept.

3. The kind and quantity of obligation imposed by any particular law may be gathered from the express mind of the lawgiver. If the matter be capable of a grave obligation, and in making the law words indicating a strict precept are used—*e.g.*, *we command*, *we severely ordain*—the presumption is that the law imposes a grave moral obligation. The same may be said if a grave censure or other grave penalty is imposed on transgressors. The interpretation of Doctors, and the way in which custom interprets a law, are also guides to its binding force.

4. An affirmative law, which commands something to be done, is said to bind *always but not for always*. Thus we are commanded to pray always—*i.e.*, never to abandon prayer—though we are not obliged continually to pray all day long, but only at suitable times. A negative precept, on the other hand, binds *always and for always*, so that we must continually act according to its prescriptions. At no time on days of obligation may we do servile work.

5. A law imposes in the first place an obligation on those subject to it to inform themselves of its existence and provisions, for it imposes the duty of observing it, and this cannot be done unless the terms are known; knowledge of the law is the necessary means to the end. A law also forbids us to put ourselves in the proximate occasion of transgressing it, for the avoidance of such proximate occasions is also a necessary means for the observance of the law.

6. A negative law is observed by abstaining from what is forbidden, for that is the intention of the lawgiver. Provided that we abstain from servile work on a Sunday, we fulfil that part of the law; no special intention of not working or of fulfilling our obligation is required. An affirmative law which prescribes something to be done sometimes requires a conscious human act for its fulfilment; sometimes it does not. If the obligation be merely *real*, as the duty of paying a debt, even unconscious payment will suffice, provided that the creditor gets what belongs to him. If a personal obligation is imposed of performing some action—*e.g.*, hearing Mass—the action must be performed in a human manner, by a conscious, voluntary act. It is not, however, necessary to intend to fulfil the purpose of the law; we satisfy the precept of hearing Mass by intending to hear it and actually doing so; to fulfil the obligation it is not necessary to intend to honour God, nor even to be in a state of grace; the end of the precept does not fall under the precept, as the adage has it.

7. We may sometimes satisfy two obligations by one and the same action, as when a day of abstinence, on account of a vigil, falls on a Friday, or a day of obligation falls on a Sunday. Sometimes, however, the nature of the obligation or the presumed will of the legislator prohibits this being done. If a confessor imposed the hearing of Mass for sacramental penance, it would ordinarily be intended that a Mass not otherwise of precept should be heard. Nothing hinders the simultaneous fulfilment of two different obligations by actions which do not clash. A priest may well say his breviary while hearing a Mass of obligation.

8. If the whole of an obligation cannot be fulfilled, we are not thereby excused from fulfilling a part, if the matter is capable of being divided, and thus in some degree the end of the law is secured. If a priest, for example, cannot say the whole breviary, he must say what he can, if the portion which he can say be considerable and the form prescribed by the Church be observed. However, if a Bishop could not go the whole way to Rome to make his visit *ad limina*, there would be no obligation of going as far as he could.

9. When a fixed time is appointed for the fulfilment of an obligation, sometimes, according to the will of the legislator, after the term has passed, the law no longer binds; sometimes, on the other hand, the obligation must still be fulfilled. Thus, if a priest lawfully or unlawfully has omitted his breviary, he is not bound to make it up on the following day, or if one of the faithful miss Mass on a Sunday, he is not bound to supply the omission by hearing it on a week day. On the other hand, if a debt has not been paid on the date agreed on, it must be paid as soon as possible afterward, and if the Easter Communion has not been made at the proper time there still remains the duty of making it.

CHAPTER VII

ON THE INTERPRETATION OF LAW

1. THE interpretation of law is its genuine explanation according to the mind of the lawgiver.

(*a*) This interpretation may be *authentic*, *doctrinal*, or *customary*.

Laws are authentically interpreted by the lawgiver, his successor, and by him to whom this power of interpreting the law has been granted by them.

An authentic interpretation set forth by way of law has the same force as the law itself; and if it only declares the words of the law which in themselves are certain, it does not need to be promulgated and it has a retrospective force; if it restricts or extends the law or if it explains a doubtful law, it has not a retrospective force and it should be promulgated. But if it is given by way of judicial sentence or rescript in a particular matter, it has not the force of law, and it only binds the persons and affects the matters for which it was given (Can. 17).

Doctrinal interpretation is that which doctors and lawyers make according to the recognized rules of legal interpretation. It has weight according to the knowledge, skill, experience, and standing of him who makes the interpretation.

Customary interpretation is that which a law receives from the practice and conduct of those who are subject to it. It has very great authority, for it is presumed to have at least the tacit approval of the lawgiver, and indeed, according to the adage, " Custom is the best interpreter of law " (Can. 29).

(*b*) A *strict* interpretation takes the words of the law in their literal meaning; a *wide* interpretation takes the words in a looser sense.

2. Many rules are given by canonists for the doctrinal interpretation of law. The following are the most important for our purpose in moral theology:

(*a*) The words of the law must be taken in their obvious and natural meaning. The lawgiver must be supposed to have wished to express himself as clearly as possible, and to have said what he meant. Sometimes, however, legal terms have a technical meaning which must be attended to. Thus,

legitimate in ecclesiastical law is used of children who have been legitimatized as well as of those who were born in lawful wedlock.

(*b*) The mind of the legislator and the scope of the law must be attended to. This rule does not imply that we must try to get at the private intention and object which the lawgiver had in view in making the law. It means that we must consider the circumstances which gave rise to the law, the object which it was designed to attain as expressed in the law itself, especially in the narrative or historical portion of it. The whole law should be pondered, not merely an isolated section; and if there is question of interpreting an answer or rescript sent in reply to a question or petition, this latter must be carefully considered.

(*c*) Laws which impose some new burden or restriction receive a strict interpretation, those which confer a favour a wide interpretation. For the lawgiver is presumed to be benignant towards his subjects, and to have expressed himself with precision and strictness in the disagreeable task of laying burdens on his people. In such a law, then, the word *clerk* will only comprehend the lower ranks of the clergy, whereas it will comprehend dignitaries and religious in favourable matters.

(*d*) A law must not be extended from one case to another even if the same reason exist in the two cases, for the reason of the law is not the law. And so although parish priests are bound to offer Mass on holy days of obligation for their parishioners, this obligation must not be extended to a parish priest's assistants, for such priests, though they have the care of souls, are not parish priests (Can. 475). If, however, anything unjust, inequitable, or absurd would follow from the application of this rule, then it must not be applied. And so, generally, where the law punishes the adultery of the husband, it must be applied to an adulterous wife; where power is granted to make a will, legacies may be left too. The less is contained in the greater (*cf.* Can. 18 ff.).

3. *Epieikeia*, or equity, is a benign and equitable interpretation of the law, by which it is not deemed to apply to some particular case. For cases arise where, if the law were applied, hardship and harm would be the result. The law is made for ordinary conditions and is intended to apply in ordinary circumstances; the lawgiver could not foresee all possible cases, and he is not presumed to intend the law to press unduly on individuals, so as to cause special hardship. So that when

the observance of the law in any particular case would cause special hardship which the lawgiver cannot be presumed to have intended, the person so situated is excused from obeying the law by an equitable interpretation of it. If, for example, I should incur serious risk of contracting some disease if I went out to hear Mass on a Sunday, I am excused from obeying the precept.

Such equitable interpretations are specially permitted in affirmative laws, not in those which make an act done contrary to them null and void. The common good requires that these should be observed even with grave personal inconvenience. And so the diriment impediments of marriage do not cease to bind even when they cause serious inconvenience in particular cases.

CHAPTER VIII

WHAT EXCUSES FROM OBSERVING THE LAW

1. THE natural law continues to have binding force even though its observance entails great inconvenience. We must not commit murder to save the State, nor are we allowed to tell a lie in order to preserve human life.[1] Positive law, however, does not bind with the same rigour. Our Lord taught us[2] that even the positive divine law does not bind men when great inconvenience would follow from its observance. It is an axiom that necessity has no law. This is all the more true of positive human law, which must be accommodated to the moral strength of the majority of the people, otherwise it will be impossible to observe it, and nobody can be bound to do what is impossible. So that not only physical impossibility excuses from the observance of the law, but also any relatively great difficulty or serious inconvenience which constitutes moral impossibility (Can. 2205).

No general rule can be given for estimating the degree of difficulty which would excuse from the duty of observing any particular law in the concrete. The importance of the law, the intention of the legislator, the results of non-observance of the law, the degree of difficulty in the special case, must all be considered, and a prudent judgement given in view of all the circumstances.

2. A law binds those to its observance who are subject to it, but it does not oblige people to remain subject to it. If I do not like living under a particular law, the law does not prevent me from going elsewhere into territory where it does not bind, and thus freeing myself from the duty of observing it. If I do not like abstaining from flesh meat on days of abstinence, I may lawfully go and live in Spain, get my *Bulla Cruciata*, and enjoy my flesh meat. Such an action will be perfectly lawful, even if I directly intend to withdraw myself from the authority of the law. I have the right to use my liberty to go and live where I choose as far as the law is concerned. And when I am outside the particular territory subject to the law, it no longer binds me.

[1] Inn. III, c. Super eo, de usuris. [2] Matt. xii.

3. As long as a person remains subject to a law he must have the will to fulfil its obligations as far as he can, so that he must not do anything with the intention of making it impossible for him to observe the law. Moreover, he must take reasonable means to be able to do what the law commands, for one who is bound to secure some end is bound to use the necessary means. And so a priest who is going to travel must take his breviary with him so as to be able to say his Office; and time must be made by all Catholics for hearing Mass, receiving the sacraments, and fulfilling other religious duties. The question as to what obstacles to the observance of a law I am bound to remove as far as I can, or whether and when I commit a sin by doing something which will make the observance of the law impossible, is one of great practical difficulty. We have already seen that it is not lawful to put obstacles in the way of observing a law with the intention of escaping the obligation. But suppose there is no such intention, does the precept of hearing Mass, *e.g.*, forbid me to go to a seaside place where there is no Catholic church, and where I foresee that I shall not be able to satisfy the precept?

This is a type of many practical questions which occur and for which it is difficult to find a general answer. The law in question, the intention of the lawgiver, the practice of good men, and other circumstances, must be weighed in each case. The answer given by theologians to the special question proposed may be taken as a guide toward a solution in other similar cases. They say that such a precept does not oblige us to foresee and make arrangements for its observance a long time ahead; such an obligation would be a great inconvenience and seriously interfere with our liberty. So that any time within the week I may go where I like without regard to the necessity of hearing Mass on the following Sunday. However, when Sunday is practically at hand, say on Saturday evening, the precept of hearing Mass begins to be urgent, and forbids me to do anything without necessity which would make it impossible for me to fulfil the precept.

In this question, as in others, we are considering what is of strict obligation under pain of sin; a good Catholic would of course try as far as possible to have the opportunity of fulfilling his religious duties on a Sunday.

CHAPTER IX

ON THE CESSATION OF LAW

A LAW may cease to bind in various ways. It may be abrogated or altogether withdrawn by the legislator, or his successor, or his superior. For he who made the law can unmake it. Derogation is the annulling of some portion of the law, while the rest remains intact. The law may fall into desuetude from non-observance, or on account of a contrary custom being introduced. It may also cease to bind because it no longer attains the purpose for which it was made, and has become useless. It may cease to bind in particular cases because a dispensation has been obtained. Something must be said on custom, on a law becoming useless, and on dispensations. This will be done in the three following sections.

SECTION I

On Custom

1. A custom in the technical sense must be distinguished from a mere *use*. A use is a constant manner of acting but without binding force. Thus we take holy water on entering the church, and receive blessed ashes on Ash Wednesday, and palms on Palm Sunday, but there is no obligation of doing so, and no sin is committed if we neglect these pious practices; they are only uses. A custom has the force of law from which it only differs in its origin. It arises from the repeated acts of the community which it binds. However, inasmuch as in ecclesiastical matters at least, the community as such has no legislative authority, the binding force of ecclesiastical customs is derived from the express, tacit, or legal consent of the legislative authority. Legal consent to all customs which have the requisite qualities is given in the last chapter of the *Title on Custom* in the *Decretals*, and Can. 27.

2. A custom is said to be according to the law if it confirms and interprets the law by long-continued usage.

It is beside the law if it introduces a new law in a matter for which no written law exists.

It is contrary to the law when the acts by which the custom was introduced were forbidden by law. There is nothing repugnant in the notion of a lawful custom being introduced by wrongful acts, for when the custom is formed the acts cease to be forbidden, because the contrary law has in fact ceased to exist.

3. In order that a custom may have the force of law it must be reasonable and it must fulfil certain other conditions.

A custom will be reasonable if it is not against the natural or divine law, against which no custom can prevail, nor furnishes the occasion nor is an incentive to sin, nor is pernicious and hurtful to the common good. Inasmuch as custom has the force of law, it cannot be introduced by individuals or by private families, for whom precepts may be given but laws cannot be made.

It must be introduced by the repeated acts of the greater portion of a community or corporate body which is capable of being the subject of law. How many acts are required to form a custom depends much on the matter, and must be left to the prudent judgement of experts.

The acts by which the custom is introduced must be voluntary, not the product of ignorance or mistake, and unless the tacit consent of the legislator is given before, they must continue for a long time—that is, forty years (Can. 27).

4. As custom depends on the will of the ecclesiastical superior, he may refuse to admit or he may abrogate a custom.

The clause "Notwithstanding any custom to the contrary," which frequently occurs in pontifical legislation, merely annuls general customs to the contrary, not special ones nor immemorial customs, nor those of a hundred years' duration. These require special mention in papal but not in episcopal legislation. The reason of the difference lies in the fact that the Pope may easily be unaware of local customs, and he does not annul what he does not know. But a Bishop is presumed to know the customs of his diocese, and if he makes a law which is against a custom he thereby abrogates the latter.

Only a reasonable custom which is immemorial or of a hundred years' duration can prevail against a law which contains a clause forbidding future customs to the contrary (Can. 27). If, however, a law reprobate contrary customs as abuses, they cannot be introduced as long as the circumstances remain the same. Such customs would be unreasonable, and could not have the consent of the legislator.

SECTION II

A Law Become Useless

1. A law should further the common good; if it ceases to do this, it becomes useless, and ceases to be a law. A law then ceases to bind when it ceases to be useful for the object for which it was made. However, it not unfrequently happens that a law was designed to further several objects, and it may well be that, though it is useless for one purpose, it is of use for another. The law which requires banns to be published before marriage is designed to discover impediments if there be any, and also to secure the publicity of marriage. It may be absolutely certain that there are no impediments, but for all that the other object of the law remains to be secured, and prevents the law from being useless. The law remains in force as long as it serves its purpose to some extent, though it may not attain all the objects for which it was made.

2. A positive law ceases to be of obligation in a particular case if it becomes hurtful, or if it cannot be observed without serious inconvenience. But does a law cease to bind in a particular case when it becomes merely useless, when it fails in that particular case to attain any of the objects for which it was made? This question is disputed among theologians. The better and more common opinion is that the law does not then cease to bind. For the law is made for the community, and if it continues to promote the common good it retains its binding force for the community. Nor can individuals shake off the obligation of such a law on the ground that it is useless for them; they are bound to conform their actions to the rules which govern the community of which they are members. Besides, there is always danger of self-deception in such matters, and it would be a dangerous principle to admit that one who thinks that a law is useless as a guide for his own conduct need not obey the law. If, however, there be no danger of self-deception, and if it is quite certain that a law has ceased to be of any use in some special case, several theologians of weight admit the probability of the contrary opinion.[1]

Canon 21 enacts that laws made to guard against a general danger continue to bind even though the danger may not exist in a particular case.

[1] Bucceroni, 1, n. 172.

Section III

On Dispensations

1. A dispensation is a relaxation of the law in a particular case for some special reason. The law still remains in force, but by a dispensation one who would otherwise be bound to conform to it is withdrawn from the operation of the law. When a law forbids something to be done without leave, as when a religious is forbidden to go out without the leave of his superior, the going out with leave is not against the law, but is in keeping with it. On the other hand, when one eats meat on a Friday, with a dispensation, the act is against the law, but the obligation of the law has been removed from the person dispensed. As jurisdiction is required to make a law, so ordinary or delegated jurisdiction is necessary for granting a dispensation. Ordinary jurisdiction is that which by law is annexed to an office; delegated jurisdiction is exercised by the commission of one who has ordinary jurisdiction (Can. 197).

A good cause is always required in order that a dispensation may be lawfully asked for and granted. All should conform to the laws made for the common good, and the superior who without just cause exempts anyone from the duty of obeying a law is unfaithful to his office, and commits the sin of acceptance of persons. If such a superior uses only delegated authority to dispense, he acts not only unlawfully, but invalidly, because he received his authority to grant dispensations only for a good cause. He therefore exceeds the limits of his authority by attempting to dispense without good reason. Similarly, one who asks for a dispensation without good cause does wrong.

A good cause for granting a dispensation must not be altogether trivial, nor is it so grave that of itself it exempts from the obligation of obeying the law. Beyond saying this, it is difficult to be more precise. Much depends on the particular law in question, and on the circumstances of the case.

2. A legislator can dispense in his own laws, in those of his predecessors, and in those of his subordinates by his ordinary jurisdiction; he cannot dispense in the laws of his superior unless he has received delegated authority for the purpose.

(*a*) The Pope, then, can dispense in all ecclesiastical laws, even in those which have been made in a general council. He cannot dispense in the natural or divine law; but in vows,

oaths, and in marriage which has not been consummated, the Pope can for good cause dispense in the name of God, or at least declare that in certain circumstances they have ceased to exist; for whether he then in the strict sense dispenses, or only declares the sense of the divine law, is a disputed point. In practice there is little difference between the two views.

(*b*) Bishops can dispense in episcopal laws, and even in those of a provincial or plenary council, unless such authority has been reserved. Although they have no authority over the common law of the Church *per se*, yet by custom and the presumed consent of the Pope, Bishops can in particular cases dispense from the common law in trivial and doubtful matters, in matters which are of frequent occurrence, as in abstinence, fasting, observance of days of obligation, in the divine Office, and even in other matters of greater moment which admit of no delay.[1]

Bishops can dispense not only their own subjects, but strangers also, in such matters as fasting, abstinence, observance of days of obligation, vows, etc.[2]

(*c*) Regular prelates have quasi-episcopal authority over their own subjects, and can do for them what Bishops can do for their subjects. Moreover, many privileges have been granted by the Popes to regular Orders, by virtue of which they can dispense not only their own subjects but others also.

(*d*) Although parish priests *per se* cannot dispense either in general or in particular laws (Can. 83), yet the power is expressly granted to them to dispense in particular cases and for a good reason even outside their parishes particular individuals and families subject to them, and within their parishes strangers also, from the common law of observing feast days and also from the observance of fasting or abstinence or of both fasting and abstinence (Can. 1245). Those who have the cure of souls in places where there are no parish priests in the strict sense have the same authority from the necessity of the case, from custom, and often by implicit or explicit grant.[3]

3. If there be a good and sufficient cause for granting a dispensation, the superior may ordinarily either grant it or refuse to do so, as he judges fit; but if serious public or private harm would follow from not granting a dispensation, charity may require that the favour should be granted. But even in that case, unless the inconvenience is so serious that it excuses

[1] St Alphonsus, 1, n. 190.
[2] Can. 1245, 1313.
[3] Concil. Westmon., d. 23, nn. 1, 3.

from the obligation of the law, if a dispensation is refused, the law must be obeyed.

4. The power of granting dispensations in general but not for a particular case (Can. 85) is of wide interpretation, for it exists for the common good; a dispensation, however, is a wound inflicted on the law, for the law should be uniformly observed by all as far as possible, and so a dispensation is of strict interpretation, and when in doubt as to whether it extends to some particular case the law should be observed.

5. A dispensation granted for a country, province, or diocese, may be taken advantage of by all who are staying even for a time in the territory, but no one may use it outside the territory for which it is granted. The law for the time being does not bind within the territory dispensed, but it does bind outside. On the other hand, a personal dispensation, like a precept, follows the person, and may be used anywhere, unless specially restricted, as is the case with the dispensation to eat meat granted by the *Bulla Cruciata*, which cannot be used outside the limits named in the Bull.[1]

6. A dispensation ceases by being recalled by the legislator. One who has granted a dispensation by delegated authority may also for good reason recall his dispensation, and in that case the law begins to bind again. However, one who has been dispensed from a vow cannot again be bound by vow without his own free consent. The person dispensed may also renounce a dispensation granted in his favour, and, in the case of a dispensation granted from a vow, by renunciation of the dispensation the vow binds again. However, the obligation of a law can only be reimposed by the competent authority, so that the renunciation of a dispensation from a law must be accepted by the superior in order to be effective. A dispensation also ceases if the whole cause for granting it cease before the execution of the dispensation, or, if the cause is continuous, whenever it entirely ceases. And so if a dispensation from abstinence was granted on account of a weak state of health, the dispensation will cease and the law will again bind when the health has been completely established. If, however, a dispensation has been put in execution, or has been granted absolutely, it will not cease even though the cause no longer exists. And so a dispensation to marry, granted and already executed *ad prolem legitimandam*, will not cease though the child die before the marriage.

[1] " Intra limites tantum Hispanicae ditionis." A.S.S. 35, p. 565.

CHAPTER X

VARIOUS SPECIES OF LAW

SECTION I

The Natural Law

1. CERTAIN actions are in themselves conformable to right reason, while others are opposed to it. On account of the relation between parent and child, right reason tells us that it becomes a child to show love and reverence toward his parents; on the other hand, hatred and ill-treatment of one's parents are opposed to right reason. Conscience tells us, moreover, that it is our " duty " to love and reverence our parents, that we " ought " to do so, that we are " bound " to do so; thereby making known to us the will and precept of a superior, the will and command of God, the Author of nature, and our Lord and Master. He cannot be indifferent as to whether we follow the dictates of right reason or not; he necessarily, as he is good and holy, wills that right order should be observed by us.

The rules of conduct which right reason manifests to us, and conscience, the voice of God, commands us to follow, constitute the natural law, which is a participation in human reason of the eternal law of God, willing that right order should be observed, forbidding it to be disturbed.

2. The objects, then, of the natural law are all those actions which in themselves are conformable or not conformable to rational human nature. They are actions which are necessarily prescribed, because they are demanded by human nature, or, on the contrary, they are necessarily forbidden, because they are contrary to the demands of human nature. They are good or evil, not merely because they are commanded or forbidden by lawful authority, but because in themselves they are becoming or unbecoming for man to perform because human nature is what it is. This is the ground of the well-known distinction between *mala in se* and *mala quia prohibita.*

3. As rational human nature remains substantially the same, and its essential relations do not change, it follows that the

duties which the natural law imposes on man do not change substantially either. The natural law, then, in itself and objectively is universal and unchanging; it binds all men at all times. However, it does not follow that the natural law is always and everywhere equally well known. In its broad general principles, indeed, it has been known and taught at all times; it would be impossible for human society to continue unless the general principles of the natural law were known and acted on. Any serious departure from the law of nature soon brings with it its own remedy and correction by the stern elimination of the delinquent. Still there may be, and there is, ignorance of particular details and applications of the law of nature, even in matters of importance and of frequent occurrence. This is true not only of savage and untutored races, not only of primitive races, but even of civilized and Christian peoples. Theologians readily admit this. Many theologians of note allow that among such peoples there may exist ignorance of the malice of fornication; they warn us that other acts against the natural law are sometimes done in good faith, without any knowledge of their malice. The presumption, then, is that among Christians the general principles of the law of nature are known, but the confessor must be prepared to meet with cases of ignorance of the particular details and applications of it.

Section II

The Positive Divine Law

1. Besides the natural law, there are certain positive precepts which God has imposed on mankind. These are known to us from the manifestation of the divine will which we have in revelation, and especially in the Old and New Testament. Theologians divide the positive laws of the Old Testament into ceremonial, judicial, and moral precepts. The ceremonial precepts had reference to the system of religious worship established by God under the Old Law, the judicial regulated the civil polity of the chosen people of God, and when the old dispensation gave place to the new at the coming of our Lord both ceased to have binding force. Our Lord, however, by no means abolished the moral precepts contained in the Old Law; on the contrary, he promulgated them anew and perfected them.[1]

[1] Matt. v 17.

2. In the New Law of Christ there are no new moral precepts except such as follow from the truths of faith which our Lord made known to us, and from the institution of the sacraments. We are under moral obligation to believe explicitly in the Blessed Trinity and in the Incarnation, as well as in other articles of the Christian faith. We are bound to receive the holy Eucharist and other sacraments instituted by Christ. But besides such as these, it is the common teaching of theologians that the Christian dispensation contains no new moral precepts. If our Lord called his precept of love new, he did not mean that the great commandment did not bind under the Old Law, but only that he urged it anew, gave us new motives to practise it, and especially his own divine example and wish. He also corrected some false interpretations of the moral law, which were current among the Jews of his time; he developed what was implicitly contained in the moral precepts of the Decalogue, and he added to the precepts counsels of great perfection, which he proposed as the ideal of the Christian life, but which he did not command all to follow under pain of sin. In moral theology we abstain as a rule from treating of what concerns perfection; it is our task to distinguish between what is sinful and what is not, for the use of the confessor in the sacred tribunal of Penance.

3. The law of Christ is meant not for a particular nation, but for all men. Christ commanded his followers to preach to the whole world, to teach all men to observe whatsoever he had commanded, and the new dispensation was not to be merely temporary, like the old, but it was to last to the end of time.[1]

SECTION III

On Ecclesiastical Law

We saw above that the Catholic Church has received from her divine Founder full and independent authority to make laws, binding upon all her children in matters which pertain to religion and the salvation of souls. She has constantly used this power which Jesus Christ gave her. Various collections of Church law were made from an early period in her history, but those which are contained in the *Corpus Juris* are the most celebrated. The *Corpus Juris* is usually divided into two volumes. The first contains the Decretum of Gratian, a Benedictine monk, who composed his work about the middle

[1] Matt. xxviii 19.

of the twelfth century. It is a private collection, and so the documents of which it is composed have only the authority derived from their origin, unless custom or subsequent approbation has given special canons greater weight. The second volume, on the contrary, contains several official collections, made by the authority of the Holy See. These are the Decretals of Gregory IX, the Sext, and the Clementines. Any papal constitution contained in these collections has authority from the very fact of its insertion in the *Corpus Juris*. The second volume also contains the Extravagants of John XXII, and the Common Extravagants, both of which are private collections, although inserted in the *Corpus Juris*.

The *Corpus Juris* contains the ancient law of the Catholic Church, which has been modified and accommodated to the times by more recent councils and constitutions of the Holy See. The Council of Trent especially made many changes demanded by the altered circumstances of the times, and the Popes have at different times issued a great number of constitutions and laws to meet the constantly changing wants of the Church. These constitutions are usually quoted by giving the Pope's name and the initial words, together with the date of the document.

Early in the year 1904 Pius X ordered the common law of the Western Church to be codified. The work was finished and promulgated by Benedict XV on Whit Sunday, 1917. This new *Codex Juris Canonici* came into force on May 19, 1918. It has binding force throughout the Western Church. Besides the common law which binds the whole Church, each country, province, and diocese has its own special laws and customs. The four Councils of Westminster contain the special provincial laws which bind the Catholics of England and Wales.

Section IV

On Penal and Voiding Laws

1. We saw in Chapter VI that if the legislator chooses, and if he thinks it will be for the public good, he may intend a positive law made by him to bind, not under pain of committing sin by its mere violation, but only under pain of being obliged to pay the penalty imposed. Such a law is, as we saw, called by theologians a penal law. Besides the rules and constitutions of certain religious orders, ecclesiastical legislation does not afford many examples of penal laws. As a rule,

ecclesiastical laws are either moral laws or mixed; they forbid or command an action under pain of sin, and frequently they impose a penalty on transgressors.

It may be asked whether ignorance excuses from the penalty imposed by a law. This question is now settled by Canon 2229.

Sec. i. Affected ignorance, whether of a law or of a penalty only, excuses from no penalties *latae sententiae.*

Sec. ii. If a law has the words, *shall have presumed, dared, knowingly, studiously, rashly, designedly done it,* or other similar phrases which require full knowledge and deliberation, any diminution of imputability whether on the part of the intellect, or of the will, exempts from penalties *latae sententiae.*

Sec. iii. If a law has not those words, ignorance of the law, or even of the penalty alone, if it were crass or supine, exempts from no penalty *latae sententiae;* if it were not crass or supine it excuses from medicinal penalties, but not from vindictive penalties *latae sententiae.*

2. Some penalties are by the will of the legislator incurred by the very fact of committing the crime to which the penalty is attached; others require the sentence of the judge. Penalties which require some action on the part of the delinquent, and especially if deprivation of office is annexed to it, as a rule require the sentence of a judge; the guilty party cannot be expected to punish himself.

3. In order to make sure of attaining the end he has in view, the legislator sometimes annuls and makes void some act which otherwise would have its natural effect. Such a law is called a voiding or annulling law, and there are many examples of it both in civil and ecclesiastical legislation. Thus a deed is void unless sealed, signed, and delivered; a will is void unless made with the requisite formalities; marriage between near relations is null and void. Sometimes the law makes an act voidable only, and not immediately void, at the instance of someone who must move in the matter; otherwise the act will remain valid. Thus a contract entered into under constraint is voidable by English law; a gift made of his property by a religious under simple vows is voidable by his superior, unless it has taken effect and a third party has thereby acquired rights. Sometimes the law does not annul the act or make it voidable, but it refuses to grant an action to vindicate a claim or it bars the remedy. Thus English law will not aid the winner to recover a wager, nor does an action lie to recover payment of a debt barred by lapse of time.

4. A voiding law sometimes directly affects the act, and makes it of no effect, as does an impediment of marriage; sometimes it immediately affects the capacity of the person, as ecclesiastical law deprives religious who are solemnly professed of the capacity to make a valid will; sometimes it annuls an act destitute of certain formalities, as a clandestine contract of marriage.

5. If a voiding law also prohibits the acts which it annuls, it binds subjects not to perform such actions; charity and justice require also that a lawyer employed to make a will should draw it validly according to the law; otherwise one who performs an act made void by law, but which is not morally wrong or injurious to others, does not commit a sin.

6. Neither ignorance, nor grave fear, nor serious private inconvenience avail to make valid an act which has been made void by the law. For none of these causes affects the objective validity of the act which the law strikes at for the common good. If, however, a voiding law causes great public inconvenience, then it ceases to be for the common good; it ceases to be useful, and thereby ceases to be a law with binding force.

Section V

On Civil or Municipal Law

1. The civil authority has full power to make laws in order to the attainment of its own special end, which is the common temporal welfare of its subjects. If these laws are just, they cannot be ignored by the moral theologian, for very many practical questions will depend on them for their solution. When the classical authors published their folios on moral theology, they appealed for the most part to the *jus commune*, the common law of Christendom, which was the Roman civil law slightly modified by local enactments and customs. Nowadays this cannot be done. The unity of Christendom with its common, universally accepted stock of ideas and laws, no longer exists, and regard must be paid to municipal or local law. Especially in England and in America must this be done, for the system of law which is in force among us is distinct from the Roman civil law, and from the modern European systems which are largely based upon it.

In this section, then, we will consider the bearing of English law on questions of conscience, and try to lay down certain general principles which will guide us towards the solution of particular cases as they arise.

We saw above that the legislative authority in civil matters

can bind the conscience under pain of sin by its laws, if it so choose, for God bids us obey lawful authority. It is clear, too, that if the civil authority transgresses the limits assigned to it, and makes laws which conflict with the law of God, or with the law of the Church in her own sphere, such civil ordinances have no binding force. Laws, then, which affect to dissolve the bond of marriage, which refuse to acknowledge rights of religious granted by the Church, and others of a similar nature, are no true laws at all, and need not be regarded, except in so far as is necessary to avoid greater evil.

2. With regard, however, to such laws as it is within the competence of the State to make, conscience obliges us to pay loyal obedience to those which urge and apply the law of nature. Near relatives are bound to support the indigent poor because it is their natural duty, and also because the State commands it; and, similarly, crime must be avoided because it is wrong, and because the State forbids it. Where the law of nature is indeterminate and vague, but where the positive law has stepped in to define rights for the common good, conscience must also submit to the civil law. Unless we admit this, we shall have to say that in such matters there is no certain and definite rule for conscience to follow; rights and obligations will be left in uncertainty, to the serious disturbance of men's consciences and the public inconvenience. Laws, therefore, which govern prescription, the rights of inventors and authors, the distribution of the property of intestates, the property rights of married women, the capacity of minors, and contracts, will have binding force in both the external and internal forum.[1]

3. Certain laws merely refuse an action to vindicate a claim or bar the remedy. Such laws do not annul or invalidate any natural right which may exist in the case; the law cannot produce an effect which was never intended by the legislator, and which is repudiated by those who administer the law. A debt, then, which is barred by statute still remains a debt, and must be paid; an unstamped document may suffice to prove an obligation in conscience, though it would not be admitted in a court of justice until the defect was made good; contracts seriously entered into and completed will bind the conscience, even though the law will not enforce them because they are not in writing, or because there is not the consideration which is required by law.

[1] D'Annibale, 1, n. 206. Codex juris canonici, *passim*. *See* Slater, *Points of Church Law*, 25.

4. A very probable opinion of long standing in England maintains that merely positive laws are penal, and do not bind under sin except to submit to the penalty in case of violation, and if it be imposed. Of course, it is well that all subjects should loyally obey all the just laws of their country, and good citizens will make a point of doing so; but in moral theology we are concerned with the question of sin, and it is probable that one who violates a positive law of England does not commit sin thereby if he be prepared to submit to the penalty, if imposed. This is the teaching of Blackstone, and although other views concerning legal obligation have become fashionable since he wrote, his opinion would seem not to be materially affected thereby. According to Austin, the chance of incurring the evil imposed by the legislator on those who transgress his laws is the only possible obligation of law—a doctrine which would make all laws penal, and nothing else but penal. The idealist school does not accept Austin's views, but its only conception of moral obligation is that it is self-imposed; it denies that moral obligation is or can be imposed by a legislator.[1] It is true that if the legislator wished to impose a strict and perfect obligation by positive law, the subject would be bound under sin to conform to it, but the English legislature cannot be said to do this, as the common opinion in the country, on one ground or another, is that a moral obligation under pain of sin is not imposed by positive law.

5. The effect of voiding laws in English jurisprudence seems to be not to invalidate an act or a contract which is otherwise valid, but to empower the party concerned to annul it if he choose to take advantage of the law. Unless the party concerned move in the matter, the act struck at by a voiding law will remain valid. This seems to be the view which lawyers take of the effect of such laws; it is in keeping, too, with a very prevalent theological opinion concerning the nature of voiding laws in modern jurisprudence.[2]

Section VI

On Privileges

1. A privilege is, as it were, a private law which grants a special favour to some person.

It is a law, because although as a general rule no one is bound to use a privilege, since what is granted as a favour

[1] T. H. Green, *Lectures on the Principles of Political Obligation.*
[2] *Encyclopedia of the Laws of England, s.v.* "Null and Void."

should not become a burden and a restriction to liberty, yet it lays on all the obligation of respecting the privilege, and of doing nothing contrary to it. Moreover, those privileges which are granted not to individuals, but to bodies of men like clerics and religious, cannot be dispensed with or used at the good pleasure of members of the privileged bodies. Individuals cannot renounce the privileges of their order, but they are bound to act in accordance with them.

2. A privilege is against the law if it derogates from the law in favour of the privileged person; it is beside the law if there be no law from which it derogates.

The lawgiver to whom the law is subject can alone grant a privilege against the law, and within the territory subject to his jurisdiction. Within that territory all, whether subjects or strangers, may enjoy the privilege; no one may enjoy it outside the territory of the grantor, unless it be in the nature of a personal dispensation from the law. A privilege which is against no law may be granted to anyone.

A personal privilege is directly and immediately granted to a physical or moral person; a real privilege is granted directly and immediately to a place, office, dignity, or thing, and mediately to persons with respect to the place, office, dignity, or thing.

3. Privileges are to be interpreted according to the terms in which they are granted. And thus if a privilege is granted by the Pope to a confessor by which he may absolve from cases reserved to the Holy See, he cannot thereby absolve from specially reserved cases, much less from the cases most specially reserved to the Holy See, and which can only be absolved by faculties specially delegated by the Holy See.

Privileges granted to corporate bodies, such as Religious Orders, inasmuch as they are rewards for services rendered to the Church, and are for the common good, admit a wide and favourable interpretation. Even privileges granted to individuals, if they cause no prejudice to others, such as leave to eat meat on days of abstinence, receive a wide interpretation. Personal privileges, however, which benefit the privileged while curtailing the rights of others, as exemption from paying tithes, are regarded as a wound inflicted on the law which should be equally observed by all, and so they receive a strict interpretation.

4. Although privileges are in general granted in perpetuity, yet they cease in many ways: by revocation of the competent superior, by renunciation accepted by the competent superior,

by such change in circumstances that in the judgement of the superior they have become harmful; a personal privilege is extinguished by the death of the privileged person, real privileges cease by the total destruction of the thing or place, but the latter revive if the place be restored within fifty years; they cease also by the lapse of the time or the completion of the number of cases for which the privilege was given (Can. 72-77).

5. On the privileges of the clergy see the Code of Canon Law, Canon 118 ff.

6. Religious Orders have at different times received very ample privileges from the Holy See, so as to enable them to work for God and the Church with the greater freedom and fruit according to their Institute. These privileges are granted immediately to the religious superiors, and are by them communicated as occasion requires to their subjects. The regular or mendicant Orders, who take solemn vows, are exempt from the jurisdiction of the Ordinaries, and subjected immediately to the Holy See. Exemption, however, and many other privileges of religious have been largely curtailed, especially since the time of the Council of Trent, and now, as far as their work among the faithful is concerned, and their public conduct, regulars are to a great extent subject to the authority and correction of the Ordinary.

BOOK IV

ON SIN

PART I

ON SIN IN GENERAL

CHAPTER I

THE NATURE OF SIN

1. A SIN is nothing but a bad human act, and it may be defined as a free transgression of the law of God. For a bad human act is a disturbance of right order either because in itself it is against right reason, as murder or suicide, or because it is against the command of a legitimate superior, which imposes a strict obligation, and which right reason bids us obey. But such a disturbance of right order is against the law of God.

Every voluntary act against right reason is an offence against God and a sin, for although the sinner in committing sin does not always think explicitly of God, yet he always apprehends that he is doing a wrong action, an action which his conscience condemns, and in the condemnation of conscience is implicitly contained the condemnation of God himself.

A sin must be distinguished from an imperfection, which is either negative or positive. A negative imperfection is merely the omission of a good action which is not of precept; and such an omission when grace moves one to perform the act, though not a sin, yet is a falling short of the perfection which was within one's reach. A positive imperfection is a violation of God's will made known to us, but which does not strictly oblige us. God wishes a religious to observe his rule, but frequently this does not bind under sin. A positive imperfection, then, is a falling short not only of the perfection which was offered to us and which we might have had, but also of that which God wished us to have, though he did not oblige us to have it.

2. Sin in the sense defined is called *actual* sin; *habitual* sin is the state which follows the commission of actual sin until this be forgiven.

A *formal* sin is committed knowingly and wilfully; a *material* sin is committed without knowledge or free consent.

Sin is said to be against God, our neighbour, or ourself, as it is against some virtue which immediately regards God, or our neighbour, or ourself. All sin is ultimately against God.

Sins of *ignorance* are committed through culpable ignorance; sins of *infirmity* through passion or bad habit; sins of *malice* with cool deliberation and forethought. The last, as is obvious, are the least excusable.

A sin of *commission* is an act against a negative precept; a sin of *omission* is the wilful neglect of a positive precept.

The meaning of the terms sins of thought, word, and deed, is obvious.

3. To commit sin there must be actual advertence to the malice of the action done, either when the action is performed, or when the cause is put. This follows from what was said above about human acts, which must be voluntary either in themselves or at any rate in their cause. But no act is voluntary without previous knowledge and advertence. It is not sufficient, then, for sin that a man could physically advert to the wrongfulness of his action, and should have done so; if there was no advertence, either at the time of the action or when its cause was put, there is no sin. However, advertence to what is likely to follow when the cause is put is sufficient to contract the malice of sin; and so wrong done through wilful negligence, or passion, or habit, or carelessness, is imputable to the agent.

Advertence to an evil thought or motion does not constitute sin without free consent of the will. The will consents when it voluntarily accepts an evil suggestion presented by the mind, and it is immaterial whether the evil originates in the will, or whether the will accedes to evil when suggested to it from without. For sin, then, there must be both advertence to the evil and free consent to it; a man who takes another's money, thinking it to be his own, does not commit theft, nor does the kleptomaniac who is powerless to refrain.

CHAPTER II

THE GRAVITY OF SIN

1. WITH reference to the gravity of its malice, sin is divided into mortal and venial. Holy Scripture teaches us that there are certain sins which exclude from the kingdom of God,[1] and, on the other hand, that the just, even while they remain just, frequently fall into slight faults.[2] The same truth is taught by the Church.[3] There are, then, mortal and venial sins.

The essence of mortal sin consists in turning aside from God, our last end, and virtually placing our supreme happiness in some created good. But our last end is the vital and guiding principle of moral conduct, and to throw that aside is to make complete shipwreck of the moral life. It is not merely to wander out of the direct path, as is done by committing venial sin; however much this is done, if the ship be kept moving toward the port, it will come to harbour at last; but if the ship be steered altogether away from the port, it will never get there. By committing mortal sin, then, we turn away from God, our last end; we rob our souls of the sanctifying grace of God which is their life, and we incur liability to eternal separation from God and punishment in hell. Venial sin is indeed an offence against God, but it does not turn the soul away from him, nor rob it of his sanctifying grace; and it is more easily pardoned than mortal sin.

2. Mortal sin is sin in the fullest and most complete sense; it is an act of consummate wickedness. A bad act must have three conditions in order to be mortally sinful:

(*a*) There must be full advertence to the grave malice of the act. A child that has not yet attained the full use of reason, a person half asleep, or half drunk, or half-witted, cannot know and appreciate sufficiently the malice of mortal sin, and so cannot commit it. It is not, however, necessary to reflect explicitly on God; or on the grave wickedness contained in the act in order to sin mortally. It will be sufficient if one who has the full use of reason consciously does what

[1] 1 Cor. vi 9. [2] Prov. xxiv 16; Jas. iii 2.
[3] Trent, sess. 14, c. 5.

he knows to be seriously wrong, although there is no actual weighing of motives for doing or avoiding the act, no actual thought of God, no explicit calling to mind of the terrible consequences of mortal sin. Men who never think of God from morning till night, men who do not believe in hell, certainly commit mortal sins when they do what their consciences tell them is seriously wrong. Their conscience, as we saw above, is the voice of God.

(*b*) Besides advertence of the mind to the malice of the act, there must be full and free consent of the will to do it. If a man does not give full consent, but only dallies with the temptation, there is venial but not mortal sin; if, through being only half conscious or partially deranged, he has not full control over his will, he cannot be guilty of mortal sin.

After a temptation to sin is over, the conscience is sometimes uncertain and troubled as to whether full consent was given to sin. Often one may form one's conscience on the point by reflecting whether he was fully awake or conscious of what he was doing, whether the sinful act to which temptation impelled him was executed if there was the opportunity of doing so. If doubt remains, it should be settled by presumptions drawn from what usually happens. If he usually yields to such temptations, the presumption is that he did so on this doubtful occasion; the presumption is in his favour if he does not usually yield consent.

(*c*) The object or the matter to which consent is given must be seriously against the moral law in order that a sin may be mortal.

The matter is serious as a rule when the sin committed is directly against our duty to God, as blasphemy, heresy, hatred of God, idolatry, despair of God's mercy.

The matter is also serious when the sin causes great harm to our neighbour, as do sins against justice, charity, and obedience.

When sins cause great harm to the sinner himself the matter will also be serious and the sins mortal. This is the case with sins of intemperance and lust.

3. Some grievous sins are always mortal if there be full advertence and consent in the act. They do not admit parvity of matter, as theologians say. On the other hand, some sins, which if the matter be serious are mortal, become venial when the matter is light; sins against justice and charity are of this kind. It is a mortal sin to steal ten pounds, it is a venial sin to steal a penny. Some sins are of their nature venial, and

only become mortal when they contract some special malice from the circumstances. Fidelity to a simple promise binds under pain of venial sin, but when the promise is bilateral and the matter serious, as in espousals, it binds under grave sin and in justice.

4. From what has been said about mortal sin, it will be clear that a sin will be venial if anyone of the three conditions required for mortal sin be wanting.

5. Mortal sin may in certain circumstances become venial, and, on the contrary, venial sin may become mortal. The following paragraphs will make this clear:

(*a*) Mortal sin may become venial on account of an erroneous conscience which wrongly judges a grave sin to be only venial.

(*b*) The same may happen on account of imperfect advertence or imperfect consent to an act which in itself is gravely sinful.

On the other hand, a venial sin may become mortal:

(*a*) On account of an erroneous conscience which falsely judges a venial sin to be mortal.

(*b*) On account of a gravely sinful intention with which a venial sin is committed, as when a lie is told in order to commit adultery.

(*c*) On account of the proximate danger to which one is exposed of committing grave sin, as when one reads a slightly indecent book, but foreseeing that it will be the proximate occasion of grave sin.

(*d*) On account of grave scandal caused by venial sin.

(*e*) When light matter coalesces and becomes grave by additions, as when one who is bound to fast frequently in the day takes small quantities of food, which are notable in the aggregate; or when a considerable amount of money is stolen in small thefts.

Although no mere multiplication of venial sins can ever amount to a mortal sin, yet venial sin frequently committed disposes the soul to commit mortal sin both directly and indirectly. Directly, by forming a habit which becomes stronger and stronger, continually requiring greater indulgence for its satisfaction, and finally leads to mortal sin. This is often seen in such sins as theft and lust. Indirectly, because venial sin familiarizes the soul with wrongdoing, lessens the fear of God in the soul, diminishes the fervour of charity, and causes God to withhold those more abundant graces which he would otherwise give, and which would preserve the soul from sin, but without which the soul falls grievously.

6. To deliberate whether we shall commit mortal sin or not, weighing the reasons on either side, is itself a grievous sin. It is against the precept of charity, by which we are obliged ever to cling unswervingly to God; it is a grievous injury to God, as if a subject were seriously to deliberate whether he should or should not be faithful to his king and country.

7. In this chapter we have for the most part kept in view the objective malice of sin. As a rule, the confessor should judge of sins confessed according to the objective malice, but he will, of course, bear in mind that the subjective malice of sin may be very different from the objective. The subjective malice of sin will depend upon the degree of instruction and knowledge, the graces which the sinner had received, the violence of the temptation to which he was subjected, whether he was influenced by habit, perhaps unconsciously formed, or whether he was the subject of hereditary tendency, and many other considerations. It is obvious that the question of subjective malice must be generally left to the infinite knowledge of God, who alone sees and penetrates the inmost recesses of the heart.

CHAPTER III

ON DIFFERENT SPECIES OF SINS

1. THE Council of Trent teaches[1] that all Catholics are bound by divine law to confess to a priest all the mortal sins into which they may have fallen after baptism. A confession of sin in general terms will not suffice, but as far as is possible the confession must be integral—that is, each and every mortal sin must be confessed according to number and species. The confessor, then, must know when this duty is sufficiently fulfilled, or he must know how to distinguish the different species of sin. To enable him to do this, theologians have formulated three rules, of which sometimes one, sometimes another, is more serviceable for determining the species of any particular sin.

2. RULE I—Sins differ specifically according as their formal object differs. This rule is merely an application of the universal principle that acts are specified by their formal objects. Sins are bad human acts, and so, as we saw when treating of human acts, their formal object gives them their specific moral quality. The formal, not the material, object specifies the sin—that is, the object, inasmuch as it is morally wrong, causes the will which tends to it to be a vicious will in a certain definite way. And so adultery is a specifically different sin from fornication, because in the former case right order is doubly violated in a way that does not belong to fornication.

3. RULE II—Sins are specifically different according as they are opposed to specifically different virtues. The reason of this rule is fundamentally the same as that of the former, for virtues are specifically distinguished according to their acts, and acts are specifically distinguished according to their formal objects. And so, inasmuch as charity is a different virtue from justice, hatred, as being opposed to charity, is a specifically distinct sin from theft or detraction, which are against justice.

4. RULE III—Those sins are specifically distinct which are transgressions of formally distinct laws.

[1] Trent, sess. 14, c. 5.

Laws, however, are formally distinct not because they are made by different authorities; the same sin of theft is against the natural, divine, ecclesiastical, and civil law. But when the motives of two laws are different, and the legislators wished to impose on their subjects the obligation of the special motive which they had in view, the laws will be specifically different, and sins against them will be specifically distinct. Thus the Church commands her children to abstain from flesh meat on Fridays, in order to exercise themselves in the virtue of temperance by curbing their appetite; she forbids anyone to receive Holy Communion who has not been fasting from midnight, out of reverence to the Blessed Sacrament; these two laws, then, are formally different laws, and violations of them are specifically distinct sins. Sometimes the Church, in forbidding an action, does not choose to clothe her precept with the obligation of the motive which induced her to make the law, and then violations of the law will be simply sins of disobedience. Thus bad books are frequently forbidden with a view to safeguarding the faith, but one who reads such books unlawfully does not thereby and necessarily sin against the faith.

CHAPTER IV

THE NUMERICAL DISTINCTION OF SINS

1. If a man steals five pounds from A on one day, and another five pounds from B the day after, he commits two distinct sins of theft. There is no difficulty about such cases. But how many sins does a man commit who, with the intention of seducing a woman, begins with bad talk, immodest looks and touches, and finally attains his end? Or how many sins are committed by one who is almost all day long occupied with bad desires, which are, however, interrupted by his taking his meals and by other occupations? Or how many sins does he commit who sets fire to a building where a dozen people were asleep who all perished in the flames? In order to decide as far as possible such difficult questions as these, and enable penitents to confess the number of their sins according to the divine precept, theologians have drawn up the following rules:

2. Rule I—There are as many sins as there are total objects in sinful actions. By *total object* is meant an object of the will which either in itself or by the intention of the agent forms a complete whole, and is not referred to another action as a part of the whole. Thus the theft of a sum of money is a complete whole in itself, and forms a total object of the will. Immodest touches may form a complete whole if the intention be restricted to them without an idea of going farther; but if immodest touches are intended as a means to commit further sin, they form one complete whole with the subsequent sin, and make one sin with it.

The reason of the rule is clear from what has been said before. The object specifies the act, and if there be one whole object from a moral point of view, there will be one complete moral action and one sin.

3. Rule II—There are as many sins as there are moral interruptions in the sinful act. We say "moral interruptions" because the laws for confession are to be understood according to the common estimation of ordinary men, not according to the subtle distinctions of the philosopher. And so, if common sense tells us that on account of some interruption in the course

of a bad desire, there are two human acts, and not one continuous action, there will be two sins and not one. However, the main difficulty in this question is to decide what moral interruption is sufficient and necessary to break the moral continuity in an action and to multiply the sin.

It is clear that if a person gives up his sinful design, and then returns to it again, there will be a break of continuity, and two distinct sins. Moreover, without explicitly relinquishing his evil design, there may be such an interruption in entertaining it that when it is taken up again there will be a new action and a distinct sin. The interval which is necessary for such an interruption will vary according to the nature of the act and the circumstances.

(*a*) In merely internal sins of thought, any complete cessation from the bad thought would seem to be sufficient to interrupt the moral continuity of the action and to multiply the sin. However, if the interval is short, and the thoughts proceed from the same impulse of passion, or one depends on another and issues from it, the moral unity will not be broken, and there will be only one sin.

(*b*) A determinate purpose to commit an external sin—murder, for example—is not multiplied by ordinary interruptions demanded by sleep, meals, or daily occupations. Such a purpose, persevered in for a week or so, would constitute only one sin. The same would hold for a longer period if the purpose were renewed at short intervals, and never retracted. If, however, it were not renewed within a short interval, mere lapse of time would eventually cause the purpose to evaporate and cease to exist, so that renewal of the purpose after a considerable interval would constitute a new and distinct sin.

It is very difficult to define precisely what interval of time would be required to break the moral continuity of the act. Much depends upon circumstances; a longer interval would be required when the act was not renewed through forgetfulness, or because no occasion of renewal presented itself; a shorter would suffice if the ceasing to entertain the sinful purpose were voluntary. No better rule can be given than that the question of time must be left to the judgement of a prudent man.

(*c*) If the purpose to commit sin is from time to time externalized by the taking of some means to the end in view, the act remains one and the same for a long interval of time, and such a purpose entertained for months and years under

those circumstances would constitute only one sin. Similarly a purpose persevered in for years not to pay a debt that is owing constitutes only one sin, though, of course, it is more grievous the longer it is entertained.

4. It is a disputed point among theologians whether a sinful act which is directed to many distinct objects is only one or many sins. An example will illustrate the difficulty. If an anarchist throws a bomb into a crowd of people and kills a score of them, does he commit a score of distinct sins of murder which must be mentioned in confession if he goes to confession, or does he commit only one big sin, whose malice indeed equals twenty, but which is adequately confessed by saying, "I killed a number of people by throwing a bomb"? It will not suffice to say, "I committed homicide," for that would mean the taking of one life only, which was not precisely what was done.

In this controverted question it would seem better to distinguish, and say that if the objects were capable of being grouped together and actually were conceived as one object by the mind, there was one act and one sin. If, however, the criminal distinctly thought of the several objects and intended to kill each and all, there will be as many sins as there are distinct objects. A priest who, when starting for a fortnight's holiday, intends to omit his breviary during the whole time, commits one big sin; but if he executes his design, he commits a new sin every day that he neglects his duty, for the Office of each day forms one total object, and the precept of saying the divine Office is virtually multiple, and falls on each and every day.

5. If the means used to commit a sin are themselves evil and of the same species as the sin, and if they can be regarded as parts of one total object, as, for example, immodest talk and touches with a view to fornication, such means need not be distinctly confessed, as we saw above. If, however, the evil means are of a different species from the sinful end, as, for example, lying in order to commit a theft, the evil means are a separate sin, and must be distinctly confessed. If the means used to commit a sin are not in themselves sinful, they need not be confessed, unless the end was not attained, and in that case it will be sufficient to express in general terms in confession the use of means to give effect to a sinful purpose, by saying, for example, "I tried to commit theft," if the intending thief merely entered a house, but failed to effect his design.

PART II

ON CERTAIN KINDS OF SINS

CHAPTER I

ON SINS OF THOUGHT

1. THERE are as many kinds of bad thoughts as there are different kinds of sin, but for the purpose of this chapter they are commonly reduced by theologians to two kinds: bad desires and morose pleasure in evil imaginations. Desire, therefore, is here understood in a wide sense and comprises a longing, a wish, purpose, or intention of doing something wrong. Morose pleasure is voluntary joy, delight, and satisfaction in an evil imagination, and what is said about it is also applicable to voluntary sadness and sorrow on account of something good, which should cause the opposite sentiments.

Desires are efficacious when there is the intention of taking the necessary means to obtain what is desired; they are inefficacious or conditional when this is not the case.

2. An efficacious desire of doing what is wrong is a sin of the same kind as the external action would be; it contracts the malice of the object and of all the circumstances of the object. The reason is plain. The external action in the concrete with all its circumstances is the object to which the will tends in forming an efficacious desire; and as an act is specified by its object, the evil desire belongs to the same species of sin to which the external act would belong when performed in the circumstances contemplated.

The same must be said of inefficacious or conditional desires, unless the condition takes away all the malice of the act, as it frequently may do. There is no harm, for example, in saying, " I should like to eat meat on a Friday, unless the Church forbade it "; and the same is true generally whenever the condition, " if it were lawful," is annexed to a merely positive prohibition. If this condition is annexed to a desire against the natural law, as " I should like to steal if it were lawful," or " I should like to commit fornication if it were not forbidden," the condition does not remove all the malice of the vicious will, for the very tendency of the will toward

such objects is against right reason. Such conditional desires, then, are sinful, unless they indicate a mere propensity towards such sins without any voluntary affection of the will. In any case, however, they are dangerous, and should not be indulged or expressed.

3. Morose pleasure in the imagination of what is evil is what ordinary Catholics mean by a bad thought in the restricted sense. It is sinful when voluntary, for it is an approbation, a satisfaction in what is wrong; it is an act of the will which is specified by a bad object, and so it derives its special character and malice from the object. To take pleasure, then, in the thought of revenge, is a different sin from taking pleasure in the thought of adultery.

There is a difference, however, between the source of the malice of evil desires and of morose pleasures. We have seen that evil desires contract all the malice of the object and of its circumstances. Morose pleasure, too, contracts the malice of its object and of any circumstance which is a motive of the pleasure, but not of other circumstances which may belong to the object in the concrete. For the will in morose pleasure tends to the object not as it exists in the concrete with all its circumstances, but as it is represented in the imagination, and precisely in so far as the object thus represented allures the appetite. Morose pleasure, then, takes its malice from the object, but not from all the circumstances of the object.

Taking pleasure in an evil imagination must be distinguished from taking pleasure in the thought of sin. It is not sinful to take pleasure in thinking about pride, for example, and trying to penetrate its malice. Knowledge naturally gives pleasure and in itself is not sinful. But it is dangerous to think about some sins, about sins of lust or revenge, for example, and on account of the danger it is wrong to think about sins of the flesh without good reason. Thinking about such sins with good and sufficient reason is not sinful, for the danger of sin is not sin, and it may be neglected for sufficient cause; if there is not sufficient reason and the danger of consent is small, it will be a venial sin; if the danger of consent be proximate and the matter grave, the sin will be mortal.

4. Morose pleasure in certain definite sins of one's past life has for its object the sins as they were actually committed with all their circumstances, and so it will be infected with all the malice of the circumstances. Morose pleasure in past sins is thus similar in its malice to evil desires, and on this

account obtains the special name of "joy" in theology. A penitent who has been guilty of this sin should say what sins they were whose remembrance gave him pleasure.

5. Those who are not yet married and those who have been married may not take pleasure in the thought of what is allowed to married people, for in practice such pleasure cannot be confined to the intellect; it also excites the sensual appetite and this causes temptation and sin.

6. It is not sinful to take pleasure in a good result which followed from some evil, as, for example, in the good results of a war or of a revolution. We may lawfully rejoice in the death of someone who was causing great harm to public morality, or to the public good in general, not precisely because he is dead, but for the reason that the cause of public harm is removed. We prefer the public good to the good of the individual, especially if he is doing harm. In this connection mention may be made of certain propositions condemned by Innocent XI, of which the following is a specimen: "It is lawful for a son to rejoice that he killed his father in a drunken fit on account of the great wealth to which he has thereby succeeded." It is obvious that such joy is morally wrong, for the act of parricide was at any rate materially wrong even when committed while drunk, and joy on account of what was, and is, wrong is unlawful; nor does succession to the father's wealth, a good of a lower order than human life, especially a father's life, furnish a just cause for such unfilial rejoicing.

7. As it is unlawful to take pleasure in evil, so it is sinful to entertain voluntary sadness on account of good. To be sorry, therefore, for what is good and matter of precept is a mortal or a venial sin according as the precept binds under mortal or venial sin; and so a reprobate sins grievously who laments the years that he spent in leading a virtuous life. Even though the good be not matter of precept, as, for example, the vows of religion, it is irrational and at least venially sinful to be sorry for having taken them; it will be grievously sinful if it leads to the danger of transgressing them.

On the questioning of penitents concerning bad thoughts, see Genicot, 1, n. 175.

CHAPTER II

THE CAPITAL VICES

THEOLOGIANS divide the chief vices to which human nature is subject into seven heads or capital sins, as they are called. The name implies that they are the source and origin of many more, inasmuch as the inordinate love of any temporal good is apt to give rise to many inordinate ways of pursuing it. The seven capital sins are: Pride, Covetousness, Lust, Anger, Envy, Sloth, Gluttony.

1

On Pride

1. Pride is the inordinate love of our own pre-eminence. There is a tendency deeply seated in human nature, which arises from the self-love which is innate in every man, and which leads him to prefer himself to others, to wish to lord it over them, and to bear with impatience the yoke of subjection to authority. Truth requires that we should look upon any qualities and gifts that we possess as coming to us from the bounty and goodness of God, and as giving us no right to exalt ourselves above others who have received similar or even greater benefits from the generosity of our common Father. Pride, on the contrary, would willingly close its eyes to this salutary and humbling truth; it looks upon whatever it possesses as its own, as the fruit of its own labour and merit; it is prone to magnify its gifts, and to consider them to be greater than they really are, while on the other hand it is blind to the good qualities of others. This leads to the growth of a spirit of independence which is impatient of subjection to any authority, human or divine, and to a depreciation and contempt of others. The proud man has no need to ask God for anything; he thanks him that he is not as the rest of men; he is self-sufficient and independent of all the world. This is the pinnacle of pride, the inordinate love of one's own pre-eminence.

Consummate pride, which refuses to be subject to God and to lawful authority, and which looks down upon other men

with profound contempt, is a mortal sin. If it does not go to these lengths, but merely magnifies self without grave insubordination and contempt of others, it is a venial sin.

Pride is so serious an evil because it strikes at the root of the primary obligations of reverent obedience towards our Lord God and love of our neighbour, because it is opposed to the truth, and because of its universality; it is in the heart of every man and quickly grows to fearful dimensions unless corrected and subdued.

2. To pride is opposed humility, the virtue which occupies the mean between the two extremes of pride and pusillanimity or mean-spiritedness. The mean-spirited man refuses to take the place for which his talents fit him, and which God intends for him. He puts himself beneath his equals and inferiors to the detriment of his dignity and office; he is afraid to exercise the authority entrusted to him, and the public good suffers in consequence. Humility, on the other hand, keeps a man in his place both with respect to God and his fellow-men. It is grounded on the knowledge of God and of self; the humble man knows and acknowledges that he has nothing but what he has received from God, that he is utterly and entirely dependent on God every moment of his life, that if left to himself he will fall into the lowest depths of sin and degradation; and this knowledge causes him to think much of God and little, very little, of self. This is the virtue so much recommended by our divine Lord: "Learn of me, because I am meek and humble of heart."[1]

Pride leads to many other vices, among which are: presumption, ambition, vainglory, boasting, and hypocrisy.

(*a*) Presumption is the inclination and wish to undertake what is above one's capacity. Ordinarily it is a venial sin, but it will be mortal if it is the occasion of serious harm to the cause of God or our neighbour.

(*b*) Ambition is the inordinate striving after dignities and honours. The inordinateness consists in striving after honours to which one has no just claim or greater than one's due, or by unlawful modes and means, or with too great eagerness. Apart from such inordinateness it is not sinful to seek after honours and dignities, as these belong to the class of things that are in themselves indifferent; it is a meritorious act to seek with moderation after dignities and honours in order thereby to be able to do more for God and one's fellow-men. "If a man desire the office of a bishop, he desireth a good

[1] Matt. xi 29.

work."[1] Such an act belongs to the virtue of magnanimity. Ambition is commonly a venial sin, but it becomes mortal when it is the cause of serious harm, or when the means employed to attain its end are grievously sinful.

(*c*) Vainglory is the inordinate striving after the esteem and praise of men. It is not wrong but praiseworthy to seek after and preserve a good reputation, which, as Holy Scripture teaches, is better than great riches.[2] But inordinateness, vanity, and sin come in when the esteem and praise of those men is sought whose esteem is not worth having, or when esteem is sought for what does not deserve esteem, or not so great as is sought after, or when glory is not referred to the proper end. It is usually a venial sin, but may become mortal in the same way as ambition.

(*d*) Boasting is the inordinate bragging about one's own good qualities or gifts, or even about what is sinful. If the inordinate display is in action rather than in word it is called ostentation.

(*e*) Hypocrisy is the feigning of virtues and qualities that one does not possess.

2

On Covetousness

1. Covetousness or avarice is the inordinate love of wealth. It is not sinful to value and seek after money in moderation, but the love of money becomes inordinate when it causes a man to be too close and niggardly in spending it, too eager and absorbed in acquiring it, and ready to do what is wrong in order to come at it.

It is of itself a venial sin, but it becomes mortal when it leads to the transgression of a precept which binds under grievous sin. Although it is of itself only a venial sin, yet it is very dangerous because of man's proneness to it, and because the vice is apt to grow fast by what it feeds upon, until it becomes mortally sinful. Holy Scripture frequently condemns it and warns us against it.[3]

2. Covetousness is opposed to liberality by defect, while prodigality is opposed to liberality by excess. Liberality is the virtue which moderates the love of wealth and inclines us to spend it well, according to the dictates of right reason. Prodigality inclines a man to squander his wealth on unworthy

[1] 1 Tim. iii 1. [2] Prov. xxii 1.
[3] 1 Tim. vi 9, etc.

objects, or to give more than he should do, so that he is not able to live according to his state of life, or he is unable to fulfil his obligations, or he reduces his family to beggary.

3

On Lust

Lust is an inordinate appetite for the pleasure which has its seat in the organs of generation. A wise and provident Creator has taken care that those actions which are most necessary for the individual or for society should be accompanied by great pleasure in order that they may be exercised more certainly and more readily. If there were no pleasure connected with eating and drinking, few men would trouble themselves about those necessary actions. The great pleasure felt in the act of procreation induces men to do what is necessary for the preservation of the race which otherwise would excite only shame and disgust. This, however, can only be done lawfully in wedlock. It is lawful then, according to the rules of married life, for husband and wife to indulge in venereal pleasure; outside marriage it is inordinate and sinful.

Any act of wrongful indulgence in venereal pleasure by those who are not married is grievously sinful if directly sought for or to which deliberate consent is given. But the fuller treatment of this subject must be left till we come to the Sixth and Ninth Commandments.

4

On Anger

1. Anger is the inordinate appetite for revenge.

Revenge is the infliction of pain in satisfaction for an injury. As private individuals we are not allowed to avenge injuries which have been done us: "To no man rendering evil for evil. . . . Not revenging yourselves, my dearly beloved, but give place unto wrath, for it is written: Revenge to me; I will repay, saith the Lord."[1] Sometimes, however, in trivial matters the immediate punishment of an injury is allowed to private persons, in order to prevent a recurrence of the injustice, or under circumstances in which such an action is really an act of self-defence. In other cases private revenge is not allowed, but belongs to those whose duty it is to correct

[1] Rom. xii 17.

delinquents and to avenge outraged justice. Anger, then, will be inordinate whenever revenge is sought without just cause, or more severe than the cause requires, or when private vengeance is indulged in, or when it is sought merely to satisfy hatred and spite. In these cases anger is of itself a grave sin because it is against justice and charity; if there be merely want of moderation in the manner of seeking or executing lawful vengeance, the sin will be venial.

2. To be angry in moderation for a just cause is not sinful: "Be angry, and sin not."[1] Sin may even be committed through defect of anger, as when a parent or superior is never moved to anger against the faults of children or subjects, but permits them to go unpunished to their loss and the public inconvenience.

3. The daughters of anger, or the sins which spring from the same root, are indignation and the swelling of passion, blasphemy, imprecation, quarrelling, and contumely; fighting, sedition, striking, and wounding; which are for the most part treated of in other chapters, or present no difficulty.

Contumely is an insulting word or gesture said or done in order to dishonour our neighbour. It is against charity, and of itself is a mortal sin except when the matter is trivial. A superior may, however, with moderation and caution treat a subject contumeliously, not in order to dishonour him, but to correct or humble him. Chaffing another about his foibles for the sake of recreation is not sinful unless it goes too far and provokes to anger or cuts too deep.

5

On Envy

Envy is sadness on account of another's good, inasmuch as it is regarded as lessening one's own. It is directly opposed to charity, which inclines us to rejoice in the good of our neighbour, and is mortally sinful if the matter is serious. We must carefully distinguish envy from various other dispositions which bear some resemblance to it. Thus, if one is sorry because another has obtained something desirable, thereby making it impossible for himself to obtain it, it is not envy but emulation, which in itself is praiseworthy. Sadness because another has obtained a post of influence of which he is unworthy, is not envy nor sinful. In the same way, if one

[1] Eph. iv 26.

is sad because his enemy has obtained the means of doing him harm, there is no sin in such a disposition. Envy comes in where an equal, or one who is not much more than an equal, rises in position, power, or influence, and his rise is regarded with ill will because it seems to lower one's self.

The ambitious are usually also envious, inasmuch as they see others enjoying what they wish to have for themselves. The mean-spirited, too, are commonly envious, since they look upon trivialities as matters of great importance, and the promotion of others, especially of the young, as a lowering of themselves.

6

On Sloth

Spiritual sloth is a sluggishness of the soul in the exercise of virtue. If the reason for the sluggishness is the labour and difficulty which accompany the practice of virtue, sloth will be a mortal sin whenever on account of it a grave precept is violated; otherwise it will be a venial sin. If sloth makes the friendship of God tedious and irksome because of the trouble it takes to preserve it, it is a mortal sin, inasmuch as it is directly against our obligation of loving God with our whole heart.

7

On Gluttony

1. Gluttony is the inordinate indulgence in food or drink. The use of food and drink should be regulated by temperance according to right reason. As a standard right reason will be guided by the necessities of bodily health and strength, interpreted in a wide sense, and the uses of the society in which one lives. Inordinateness will come in if through appetite we anticipate the proper time for taking refreshment, or demand too exquisite dishes, or indulge in excess, or devour our food voraciously, or require too great care in the preparation of food, paying a chef as much as all the other servants put together.

2. Gluttony is of itself a venial sin, but it becomes mortal if it leads to violating precepts, such as those of fasting and abstinence, which bind under grave sin, or if it seriously injures health, or if it makes a man unfit to pursue his ordinary avoca-

tions, or if eating and drinking become the end for which a man lives, whose God is his belly,[1] or if it causes complete loss of reason through drunkenness.

3. Complete drunkenness which deprives a man of the use of reason, so that he cannot distinguish between what is right and wrong, is a mortal sin, for St Paul numbers it among those vices which exclude from the kingdom of God.[2] The malice of this sin does not consist merely in the depriving one's self of the use of reason, for it is allowed to do that for a good cause, but in the depriving one's self of the use of reason in such an unnatural way by the inordinate use of drink for a considerable time during which the recovery of the use of reason is out of one's power, and without any just cause. Theologians more commonly teach that if there were a sufficient cause, it would not be morally wrong to make a man drunk as a substitute for the use of chloroform, or in order to counteract the effect of poison.

To drink to excess but not so as to be perfectly drunk is only a venial sin *per se*, but it may become mortal on account of the serious harm done thereby to one's own health, or the spending in drink of money which is required for the support of one's family or the payment of one's creditors, or on account of grave scandal caused by such a sin, or on account of other sins to which it gives rise.

4. If a man could be prevented from committing a more serious sin, as murder, for example, in no other way except by making him drunk, many theologians teach that this would not be unlawful. For very probably I may induce another who is determined to commit some grave crime to be content with doing something which is less bad. Under such circumstances, to persuade another to do what is a less evil is a good action.[3]

5. Bad actions committed in drink are imputable to the agent if they were foreseen in some confused way, for they are voluntary in their cause. The same must be said of blasphemy, indecent language, and other sins of word which retain their objective malice even when said by a drunken man. Mere abuse of others, inasmuch as nobody cares what a drunken man says, would not be sinful. However, when sins in word are committed in drink, there is something wanting to them for their full and proper signification, and so, if blasphemy, for example, were punished by ecclesiastical censure

[1] Phil. iii 19. [2] Gal. v 21.
[3] St Alphonsus, 2, n. 57.

or reservation, these would not be incurred for blasphemy uttered while drunk.

6. Morphia may be given to ease pain, and brandy to strengthen a sick person, even though they cause loss of reason. This follows from what has been said and from the principle of a double effect. It is not lawful to administer such medicines in order to deprive a dying man of the use of reason, so that he may die while unconscious. The time just before death is very precious; a sinner may then be reconciled with God and save his soul; one who is in the state of grace may very much increase his merit by a good use of that time. Euthanasia then, in this sense, is unlawful; it is virtually shortening a man's life.

7. The terrible evil of drink should be combated by all the means, spiritual and temporal, which are at the disposal of the Christian. The general means which may be used are especially the frequent reception of the sacraments, the avoiding of dangerous companions and the occasions of sin, the cultivation of modes of taking innocent recreation while not at work either at home or outside, the joining of Catholic temperance societies whose members encourage each other by mutual example, and the taking of the pledge if its nature and obligations be properly understood.

BOOK V

ON THE THEOLOGICAL VIRTUES

FAITH, hope, and charity are called theological virtues because they relate immediately to God, having God for their material and formal object. They thus hold the first place among the Christian virtues; they are of the greatest importance, are most meritorious; and sins against them are the most grievous. In moral theology the acts belonging to these virtues and the sins opposed to them are treated of; the treatment of the virtues is reserved to dogmatic theology.

PART I

ON FAITH

CHAPTER I

THE NECESSITY OF FAITH

1. FAITH is here understood in the sense in which it is used by the author of the Epistle to the Hebrews[1] and elsewhere in Holy Scripture. It is an act of the intellect assenting to the truth of a proposition, not because it is evident to reason, but because its truth is vouched for by someone who knows and whom we can trust. The word has this sense among others in English. We say: "I should not like to pin my faith to such a proposition on that writer's authority." Here there is question of human faith resting on human authority. God can manifest the truth to us, and we believe that he has done so. "God, who at sundry times and in divers manners, spoke in times past to the fathers by the prophets, last of all in these days hath spoken to us by his Son." Whatever God makes known to us mediately or immediately we are justified in believing on his authority. He can neither deceive us nor be himself deceived; and we are bound to believe all that we know God to have spoken or revealed, otherwise we implicitly

[1] Heb. xi.

accuse God of lying or of ignorance. An act of divine faith, then, is an act by which we believe whatever God has revealed on the authority of God himself. God has taken care that we should know for certain what he has revealed in times past for man's benefit and guidance by founding the Catholic Church. The Catholic Church is the pillar and the ground of truth, whose chief function it is to bear witness to God's revelation, and to teach it to all men even to the consummation of the world. God's Holy Spirit, the Spirit of Truth, ever abides with the Church, to enable her faithfully and infallibly to perform her task. Faith, then, considered as a habit, is a theological virtue by which we believe all that God has revealed and the Church proposes to our belief on the authority of God himself. An act of faith is an act of this virtue.

2. God has destined us for a supernatural end of eternal happiness, consisting essentially of the beatific vision of himself, as we know from revelation; he wishes that we should, as rational and free beings, work consciously for the attainment of that end. We cannot do this without believing in God and without believing that he is a rewarder of those who do well and a punisher of those who do ill; faith, then, is the necessary foundation of the Christian life. "Without faith it is impossible to please God. For he that cometh to God must believe that he is, and is a rewarder of them that seek him."

Faith is, then, necessary for salvation, not merely because it is of precept like the Commandments, but because it is a necessary means to attain the supernatural end to which we are destined by God. Without taking the necessary means the end cannot be attained. Those, then, who have come to the use of reason, so that they can know God and know what he has revealed, are bound to make an act of faith; otherwise they cannot be saved. The habit of faith is infused into the soul together with sanctifying grace at the reception of baptism, and this habitual faith is sufficient for such as have not the use of reason, like children or those who have always been insane.

3. Our act of faith must implicitly extend to everything that God has revealed; we cannot accept some articles on his authority and reject others which are vouched for by the same authority. But it is not sufficient to make an act of implicit faith comprising all that God has revealed. We are bound to know and believe certain revealed truths explicitly. Some of these truths must be believed explicitly as a necessary

means to salvation; explicit belief in others is only of precept, and the want of it, if inculpable, will not be a bar to salvation. Explicit belief in the existence of God, the rewarder of them that seek him, is necessary for salvation, and probably also belief in the mysteries of the Blessed Trinity and the Incarnation. Explicit belief in these mysteries is certainly of precept.[1] A Christian is bound also to know and believe the substance of what is contained in the Creed, the sacraments which are of obligation, the precepts of God and of the Church, and the Lord's Prayer. It is sufficient to have implicit faith in other truths of revelation.

4. It is not sufficient to have believed the necessary articles of the faith once in a lifetime. Our acts of faith must be frequently renewed; we must lead lives of faith, according to the divine precept.[2] This divine precept is sometimes of obligation *per se*, as when the truths of revelation first become known to a man and he becomes conscious of his obligation; sometimes it is of obligation *per accidens*, as after a sin against the faith has been committed, or when a duty has to be fulfilled which requires an act of faith. However, for such as have once made their act of faith, it will be sufficient in order to fulfil the divine precept if the act of faith is renewed implicitly, as is done whenever we pray, assist at Mass, or receive any of the sacraments. It is well, however, especially in these days of unbelief, to renew frequently explicit acts of faith according to the wish and practice of the Church. They are acts of very great merit with God.

[1] Props. 22, 64, condemned by Innocent XI.
[2] Props. 16, 17, condemned by Innocent XI.

CHAPTER II

THE EXTERNAL PROFESSION OF THE FAITH

1. WE do not fulfil our duty as Christians and Catholics if we keep our religious faith concealed within our own breasts. Our duty to God, to our neighbour, and to ourselves sometimes requires that we should make open profession of the faith which we hold. When our public profession of the faith would render great honour to God, or prevent great dishonour being shown him, or prevent the true religion from being publicly despised and contemned, we must, even at the risk of great temporal loss, boldly come forward and proclaim our religious belief. We must be ready to do the same if our example would gain others to God or prevent them from falling away from him; for charity towards our neighbour sometimes requires that we should sacrifice our temporal interests for the spiritual good of others. Again, if we never made open profession of our faith, there would be grave danger of its becoming weak and altogether dying away; so we must sometimes perform external acts of our religion in order to keep the faith alive within us. The necessity of doing this is shown by the gradual falling away from their religion of Catholics who have no priests, and no churches wherein to practise their religious duties (Can. 1325, sec. 1).

2. The positive law of the Church requires that a solemn profession of faith be made by those who are about to be baptized, or received into the Church, or at least in their name if they are unable to make it for themselves. The occasions and persons who are bound by canon law to make profession of faith are laid down in Canons 1406-1408.

3. It is gravely sinful to deny the faith, or to do or say anything which is equivalent to a denial of it, or which shows that we are ashamed of it. "For he that shall be ashamed of me and of my words, of him the Son of man shall be ashamed, when he shall come in his majesty, and that of his Father, and of the holy angels."[1] However, the obligation of professing the faith is affirmative, and so always binds but not for always. In other words, we may never deny the faith,

[1] Luke ix 26.

but we are only bound to profess it openly when the divine, or natural, or positive law require it. A man might travel for months among heathen or heretics without making his faith known to anyone. As a rule, it is better openly to profess one's religion, so that all may know that we are Catholics; but under certain circumstances it might be lawful to conceal one's conversion to the faith for a time.

A Catholic who on being asked denies that he is one does not necessarily deny the faith. Such an answer might merely be a fitting reply to an impertinent question. It will, however, be a denial of the faith when the circumstances require that an open profession of it should be made. A Catholic who flies from persecution, or disguises himself, or eats meat on days of abstinence in order to avoid detection, does not thereby deny the faith. It is better never to enter non-Catholic places of worship, or be present at non-Catholic religious functions, and this is of obligation whenever such acts would be interpreted as countenancing a false religion, or as showing a spirit of indifferentism, or whenever there would be scandal or danger of perversion, or whenever lawful authority forbids them. Otherwise, merely to enter an heretical place of worship, or to be present at a non-Catholic religious function, such as a burial or a marriage, without taking part in the ceremony, is not sinful, and may be permitted for a good cause (Can. 1258).

4. All communication with non-Catholics in their religious rites and ceremonies is as a rule forbidden to Catholics. To take part in such rites and ceremonies is to take part in a form of religious worship which is not approved by God and by the Church; it is a virtual adhesion to a false form of worship, or it shows approbation of it. A Catholic, then, may not act as a sponsor in a non-Catholic baptism, or take an active part in a non-Catholic marriage or funeral. On certain rare occasions, as when in danger of death and a Catholic priest cannot be had, a Catholic may accept the ministrations of a schismatic or heretical priest, as was done by some Catholic Japanese officers who were captured by the Russians and shot in the Russo-Japanese War.

Inasmuch as heretics and schismatics are excommunicated, the Church forbids prayers, suffrages, or Masses to be publicly offered for them (Can. 2262).

5. Experience shows that very little good and much harm may come from disputes and controversies about religion. Ordinarily such disputes leave the parties concerned more

obstinate than ever in their convictions. Grave scandal, too, and great dishonour to God result from the public and contemptuous denials of sacred truths and the ridicule thrown on them in the heat of controversy. The mind of the Church is that, as far as possible, and except for the necessary defence of the faith, such disputes should be avoided whether they be public or private (Can. 1325, sec. 3).

CHAPTER III

SINS AGAINST FAITH

THE chief sins against faith are infidelity, heresy, and apostasy.

1. All who have sufficient knowledge of the Gospel are bound to embrace and believe it: "He that believeth and is baptized shall be saved; but he that believeth not shall be condemned."[1] A grave sin, then, is committed by one who rejects the faith when it has been sufficiently made known to him with adequate grounds for believing, and this grave sin is called infidelity. This positive infidelity is distinguished from privative and negative infidelity. One who has the opportunity of knowing the faith, and recognizes the obligation of making inquiries about it, but neglects to do so, commits the sin of privative infidelity. This is also a grave sin if the degree of negligence be grave. One who has no opportunity of learning the faith, or who does not advert to the obligation of making inquiries, is in negative infidelity. This is not sinful, but St Thomas[2] teaches that it is the penalty of sin, inasmuch as if a man were faithful to the light that he has in natural reason, God would take care that he should have an opportunity of knowing the faith even if it were necessary to send him a special messenger, or an angel from heaven, to make the Gospel known to him. If, then, the Gospel is not preached to every man, not God but men are to be blamed for it.

2. Heresy is the rejection by one who has embraced the faith of some portion of revealed truth which is proposed by the Church for our belief. If the rejection is voluntary and accompanied with full knowledge that what is rejected is proposed by the Church as an article of faith, the heresy is formal. Otherwise it will only be material.

It is not heresy, though sinful, to reject what is known to have been revealed by God in a private revelation; private revelations are not proposed by the Church for our belief. Nor is it heresy, but disobedience, to reject what is proposed by the infallible authority of the Church for our acceptance, but which forms no part of divine revelation. One who

[1] Mark xvi 1. [2] *De Verit.*, q. 14, a. 11, ad 1.

denied that a canonized saint is in heaven would not be a heretic, but he would be disobedient to the Church, who assures us with divine authority that he is in heaven, and bids us honour him as a saint. Formal heresy is committed not only by knowingly and wilfully rejecting a revealed truth which is proposed for our belief by the Church, but by wilfully doubting about such a revealed truth. For such a one positively doubts whether a portion of God's revelation is true, and thereby injures him as much as if he asserted that it was untrue. Similarly one who would not submit to the Church's decision, even if she defined some doctrine to be of faith, is a formal heretic. Negative doubt, by which assent to a revealed truth is withheld or suspended, and voluntary ignorance of the true Church or of other necessary truths of faith, are sinful, but they do not constitute formal heresy. Great numbers of baptized Christians who were born of schismatical and heretical parents, and who do not know the true Church, are material, not formal heretics. When they begin to doubt about their position, and advert to the obligation they are under of making inquiries, they sin against the faith, more or less grievously according to their negligence, if they remain as they are. They do not become formal heretics until the truth fully dawns upon them, or they are so disposed that they would not submit to the Church even if they knew that she alone is the true Church of Christ.

3. Heresy is punished by the Church as a crime which attacks the foundations and the very *raison d'être* of her existence. In order to incur the penalties inflicted on heresy, the sin must be both formal and external, for the Church in her external forum does not take cognizance of sins of thought. The external act must be such as of its own nature, or from custom, or from the special circumstances, is held sufficient to manifest an heretical mind. The reception of the sacrament in an Anglican church, or being married in a non-Catholic place of worship by a non-Catholic minister, are considered acts of heresy and punished as such by excommunication.

A special form for the reception of converts into the Church, based on various Roman decrees, has been approved by the English Bishops.

4. Apostasy from the faith is the grave sin committed by one who throws the faith overboard entirely. The apostate not only rejects special dogmas like the heretic, but wholly abandons the Catholic faith, and becomes a free-thinker, atheist, materialist, Mohammedan, Buddhist, etc.

PART II

ON HOPE

CHAPTER I

THE NATURE OF HOPE

1. AN act of hope is an act of the will by which we desire the possession of God and of heaven, and firmly trust that we shall obtain them together with the necessary means through the goodness of God and God's fidelity to his promises. The material object, then, of hope is God, heaven, and the supernatural helps necessary to attain thereto. The formal object is God's infinite goodness towards us, his omnipotence, and his faithfulness to his promises. God is infinitely good and wishes us to be happy with him for ever; he has promised that we shall be happy with him if only we persevere to the end. He will enable us to do this by his all-powerful grace.

2. Hope is necessary for salvation for all who have come to the use of reason. The sinner must hope in order to ask for pardon and to be able to rise from his sin. The just man must hope, otherwise he will not pray, and without prayer it is impossible to persevere in the grace of God. Hope is also matter of precept, which obliges sometimes *per se*, at other times *per accidens*, in much the same way as the precept of faith. Explicit acts of hope, however, are not necessary in order to fulfil this precept; what was said above about the acts of faith is applicable to acts of hope. Implicit acts contained in prayer, the reception of the sacraments, and other works of piety are sufficient to fulfil the obligation. Nobody, then, who is complying with the ordinary obligations of a Christian life need be anxious whether he is fulfilling the precept of eliciting acts of the theological virtues; but it is well, as a matter of counsel, to renew them frequently and explicitly.

3. The chief sins against hope are despair, presumption, and aversion for God and heavenly things.

Despair is a voluntary diffidence about obtaining heaven and the means necessary thereto. If it arises from mistrust of the goodness, power, and fidelity of God, it is gravely injurious to him, and is always mortally sinful. In an improper sense,

despair sometimes springs from an overpowering idea of one's own weakness and fickleness, and then it is frequently only venially sinful; it is not directly against hope, but rather a failure to make use of the motives to encouragement which hope furnishes.

Presumption here signifies a sin against hope by excess, and is an inordinate confidence in the attainment of heaven without using the necessary means. It is of itself a grave sin, but admits of parvity of matter, as when through such inordinate confidence one commits venial sin.

Aversion for God and heaven is distinguished from hatred of God, which is directly against charity, in that it does not wish evil to God, but prefers earth and earthly joys to God and heaven. It is, as is obvious, a mortal sin.

PART III

ON CHARITY

CHAPTER I

THE NATURE OF CHARITY

1. CHARITY, as treated of here, is an act of the will by which we love God for his own sake above all things, and our neighbour for the sake of God. The love of charity, then, is different from the love of concupiscence, by which we love God as our reward exceeding great, and desire to possess him in whom our supreme and perfect happiness is placed. This love of concupiscence is good and belongs to the virtue of hope, but it is imperfect. By charity we rise above the consideration of our own reward and happiness; we see in God the infinite Good, the Source and Origin of all good, and we rejoice in his infinite Perfection. We wish him all honour and glory and every good, and desire, as far as we can, to obtain it for him, because he is infinitely worthy of our whole-hearted devotion. So that the formal object of charity, the reason why we love God, is his own infinite goodness and worth; for this reason we love him and our neighbour, for such is his will. He has made us all in his image and likeness; all rational creatures form the great family of God, our common Father; all are capable by grace of eternal happiness with him in heaven.

2. The most intimate union with God by charity is the end for which we were created, and it is our duty to prepare ourselves for this high destiny by exercising ourselves in charity while on earth. It is the highest and the noblest of virtues, the queen of all the virtues, the seal and bond of human perfection. That we might cultivate charity all the more assiduously God has commanded it in express terms: "Thou shalt love the Lord thy God with thy whole heart, and with thy whole soul, and with thy whole mind. This is the greatest and the first commandment. And the second is like to this: Thou shalt love thy neighbour as thyself."[1] We are bound,

[1] Matt. xxii 37.

then, to love God above all other things, to cling to him, come what may, never to allow ourselves to be separated from him by sin, for: "He that hath my commandments and keepeth them, he it is that loveth me."[1] If we do this, we need have no scruples about our charity; even though we seem to have a tenderer feeling for husband, child, or friend than for God, we may call to mind that charity belongs essentially to the will; if our will is firmly fixed on God, so that we are prepared to suffer the loss of anything rather than of God, we substantially fulfil the greatest of the precepts, on which the law and the prophets hang.

All rational beings that are capable of friendship with God, and of becoming his children by grace, are to be loved for the sake of God in charity. This love of charity towards our fellow-men does not exclude love for them as friends or relatives. Love of others for any honest motive is good and praiseworthy, and may by being supernaturalized become supernaturally meritorious with God. By the precept of charity towards our neighbour we are bound to wish well to all, to pray for all, never to allow ourselves any thought, word, or deed which is incompatible with mutual love, and we are bound to help others in their necessities as far as we can.

3. As charity is the queen of all the virtues, it binds of itself under pain of grave sin, but when the matter is light the sin will be only venial. Sins, then, against charity are grievous of themselves, as we shall see while treating of them separately.

We are bound sometimes to elicit acts of charity, but, as we have already seen, it is very difficult to determine exactly how frequently. Nor is it necessary to attempt the task, for implicit acts such as are contained in a devout recital of the Our Father, sorrow because God is continually being offended by sin, pious meditation on the Passion of Christ, suffice for the fulfilment of the obligation. We must not suppose that it is difficult to love God with the love of charity, for God has commanded it, and his infinite love towards us and the desire he has of being loved by us in return prompt him to give us abundant grace to enable us to comply with his precept. By becoming bone of our bone and flesh of our flesh in Jesus Christ, God has made it especially easy for us to love him, inasmuch as it is easy for us to understand and to appreciate the infinite tenderness and loveliness of the Sacred Heart of Jesus. It is of such great merit that an act of perfect charity at once blots out all sin and reconciles the sinner with God.

[1] John xiv 21.

CHAPTER II

WELL-ORDERED CHARITY

1. THE law of charity is not fulfilled by a general and equal esteem for all mankind. Such a vague and general regard for others would probably he inoperative, and charity is above all things active. Charity, then, to be genuine must be well ordered and discriminating. It must look at the claims which others have on our charity; it must appreciate things at their true value, otherwise in wishing to confer a favour it will do harm to the object of love; it must assist others wisely according to their necessity, otherwise it will foster hypocrisy and produce professional and able-bodied beggars. In other words, as theologians teach, the order of charity has reference to the persons who claim our love, to the advantages which we desire to procure for them, and to the necessity in which they are placed.

2. God, the fountain and reason of charity, the infinite source of all good, has the first and highest claim on our love. " He that loveth father or mother more than me is not worthy of me; and he that loveth son or daughter more than me is not worthy of me."[1] Next to God we must love ourselves with that genuine charity which makes one's own salvation the first great duty of every man—" For what doth it profit a man if he gain the whole world, and suffer the loss of his own soul ?"[2] We are never justified, then, in committing the slightest sin for the love of anyone or anything whatsoever.

Neither must we without good cause expose ourselves to the proximate occasions of sin. If duty demands it and if proper precautions be taken, we may confidently trust in the protection of God, and expose ourselves to risk for the sake of our neighbour. We may, too, forego a small spiritual advantage which is not matter of precept for the sake of our neighbour. Moreover, we are sometimes called upon to sacrifice our own good of a lower order for the higher good of our neighbour. In this connection we may distinguish a triple order of goods, those which pertain to the salvation of the soul; the intrinsic and natural goods of soul and body,

[1] Matt. x 37 [2] Matt. xvi 26.

consisting in life, health, knowledge, liberty, etc.; and extrinsic goods consisting in reputation, wealth, etc. Theologians also distinguish three degrees of necessity in which one in need of charity, spiritual or temporal, may be placed. If he is in danger of damnation or of loss of life, or of other good of almost equal importance, and can do nothing to help himself, he is said to be in extreme necessity. If he is in similar danger but can do something to help himself, though not without grave difficulty, he is in grave necessity. Ordinary sinners and beggars who can help themselves without grave difficulty are in common necessity.

3. Every man, as far as he can, is bound to help his neighbour in extreme spiritual necessity even at the cost of his own life: " In this we have known the charity of God, because he hath laid down his life for us; and we ought to lay down our lives for the brethren."[1] However, we do not lie under so serious an obligation unless the spiritual necessity of our neighbour is certain, the prospect of our being able to render effective help is equally certain, and no help is forthcoming from elsewhere. Neither should we be bound to risk our lives in order to help another in extreme spiritual need if greater harm would follow from our making the attempt. So that it is not often that ordinary people are bound to expose their lives to fulfil this obligation of charity; the obligation more frequently presses on Bishops and priests who have the cure of souls, and who are bound to execute their charge in justice as well as in charity. These are bound to expose their lives for their flock not only in extreme but also in grave necessity.

Except in the case of extreme spiritual necessity, we are not bound by the precept of charity to risk life or limb or expose ourselves to any serious inconvenience. The reason is because we are not bound to use extraordinary means and suffer serious inconvenience in order to preserve our own lives, and we cannot as a rule be bound to do more for our neighbour than we are bound to do for ourselves, especially as in grave or common necessity he can help himself. We might be obliged to do more for one whose welfare was of public importance. However, when our neighbour is in grave or even in common necessity, we must be prepared to undergo some inconvenience and trouble in order to help him. More precise rules on the subject will be given below.

It is a disputed question among theologians whether one is allowed to sacrifice his own life in order to save the life of

[1] 1 John iii 16.

another whose welfare is not of public importance. Many deny that it is lawful, for we should love ourselves in the first place when there is question of equal good; charity begins at home. Others, however, more probably teach that it may lawfully be done, and that it is an act of heroic virtue; so that in yielding a plank to another in a shipwreck and permitting himself to be drowned, a man does not prefer the life of another to his own, but he sacrifices his life for the sake of virtue.

4. The more important spiritual goods of the soul should be the first objects of our solicitude, then the intrinsic goods of the soul and body, finally the extrinsic goods of reputation and wealth.

With the love of complacency which inclines us to show reverence, honour, and respect to others, we should give the preference to those who are more worthy of it on account of their closer union with God. The love of benevolence, on the other hand, leads us to prefer those who are nearer to us in sharing with them the goods which are specially due to them on account of their union with us. Although no absolute and universal rule can be laid down to guide us as to whom the preference should be given when we cannot help all, yet there is general agreement among theologians that the claims of our neighbour rank somewhat in the following order: wife, children, parents, brothers and sisters, other relatives, friends, domestics, those who live in the same place, country, and finally all others.

CHAPTER III

LOVE OF ENEMIES

1. NOT even enemies and those who injure us are excluded from the law of charity; in spite of their ill will and malice they remain our neighbours, and our Lord expressly bade us love them: "I say to you: Love your enemies; do good to them that hate you, and pray for them that persecute and calumniate you."[1] We are bound by this precept to put out of our hearts all ill feeling and desire of revenge against those who dislike and wrong us, and furthermore we are bound to show them those common marks of Christian charity which are due to all and may be refused to none. What those common marks of Christian charity are depends much on the usages of time and place, and of the society to which the parties belong. Those marks which are common to members of the same family are not due to outsiders; those which are mutually shown to neighbours of the same social standing are not due to utter strangers or to persons in a lower social position. Among the common signs of charity which may be refused to none are reckoned the following: general prayer for all which we offer up when we say the Our Father, answering a question or returning a salute, selling in open market to all comers, refraining from excluding individuals from general invitations or general benefactions.

It is not of precept but of counsel to show one's enemies unusual signs of forgiveness and charity. Such signs are to pray expressly for an enemy in particular, to visit him, to console him in affliction, to treat familiarly with him.

2. In certain circumstances, however, we are bound to show even these unusual signs of charity to our enemy, as when they cannot be refused without scandal to others who will think that they are refused through hatred, or when they are required to prevent our enemy from falling into serious sin as, for example, by conceiving a deeper hatred for us. If a former friend asks our pardon for an injury which he has done us, and if the friendship was not a freely accepted union between us, but was more or less required by our mutual

[1] Matt. v 44.

relations, we must be ready to show him again unusual signs of charity. If the friendship depended merely on our mutual liking, there will be no obligation to show unusual marks of charity after receiving an offence; what was freely given may be freely withheld, always supposing that there is no ill will. We may for a time even refuse the common and ordinary signs of charity toward another for a good reason. A superior, for example, may do so in order to correct an inferior who has offended him. An equal may do so for a time immediately after receiving an offence while the injury is still rankling in his heart; to require not only repression of ill feeling, but the immediate exhibition of marks of charity for the offender, would be to lay too heavy a burden on poor human nature. It may also be lawful to refuse the ordinary signs of charity for a time toward one who has offended us in lighter matters as a suitable punishment, and as a means of preventing a repetition of such offences in future.

3. When one who has offended us apologizes and asks for pardon we are bound to forgive him and also at the proper time to show him the ordinary signs of charity. If, however, he has injured us, we have a right to compensation for the injustice, and charity does not compel us to forego our right. We may then require satisfaction for the injury and even bring an action in a court of law to recover it against the wrongdoer, without, of course, indulging any ill will.

4. With a view to reconciliation between enemies, it is the duty of him who gave the offence to apologize and to ask for pardon, unless a position of superiority makes this inadvisable. As a rule, it will not be necessary to make a formal request for pardon; satisfaction can usually be given to the offended party in a less formal way, and in a way that is less embarrassing to both parties. If both were in the wrong, the one who was most so, or the inferior, should be the first to seek reconciliation.

5. We sometimes find it difficult to associate with certain people; they try our temper; we can scarcely talk or think of them with patience. This is sinful, of course, if it is voluntary, and if it arises from ill will towards the person in question. It sometimes, however, comes not from ill will towards the person, but from incompatibility of characters and dispositions. We dislike in him some quality or mannerism, or something which we cannot precisely define. It is what theologians call the hatred of abomination, not of enmity, and it may be without fault, as when it leads us to fly his company not in

order to wound his feelings, but to escape a trial of temper and probable unpleasantness.

To refuse the ordinary signs of charity so as not to speak to another, or to refuse to have anything to do with him out of ill feeling, and to foster this for a considerable time, is of itself a grave sin. But in estimating the gravity of such a sin in practice, the cause and the strength of the ill feeling should be considered. If the refusal to have anything to do with another come from serious ill will, it will be a grievous sin; otherwise it may be only venial, or if there be no ill will and a just cause, no sin at all.

CHAPTER IV

ON ALMSGIVING

1. ALMSGIVING is here taken in a wide sense for any of the corporal works of mercy by which our neighbour's necessity is relieved. Inasmuch as the law of charity binds us to help all who are in need as far as we can, almsgiving is obligatory by the law of nature. The obligation is frequently inculcated in Holy Scripture: "Defraud not the poor of alms," we read in Ecclesiasticus.[1] Our Lord in severe terms enjoined on his followers the exercise of the works of mercy.[2]

2. In order to measure as precisely as possible the gravity of the obligation of almsgiving, we must consider the necessity in which our neighbour is placed and our ability to help him. We are only bound to help those who are in real need; we should be fostering idleness and hypocrisy, and squandering on unworthy objects what is sorely needed by others, if we distributed our alms to the unneedy.

Theologians commonly distinguish three degrees of necessity, as we saw in a former chapter. Extreme necessity is the condition of one who from want is in danger of death or some equally serious evil, and who can do nothing to help himself. If in similar circumstances he can, though with difficulty, do something to help himself, he is said to be in grave necessity. Beggars and the indigent poor generally are in common necessity. These distinctions cannot be applied with mathematical accuracy; they are necessarily somewhat loose and vague, but they represent real differences which, broadly speaking, are capable of being appreciated without much difficulty.

With regard to the ability of him who is called upon to relieve the needy, theologians distinguish between what is necessary to support the lives of a man and his family, what is necessary to support one's position, and what remains over and above and is superfluous.

3. Except in the case of extreme necessity, which in ordinary circumstances is rare, there is no obligation to give alms out of what is necessary either for the support of life or position.

[1] Ecclus. iv 1. [2] Matt. xxv 41.

Charity, as we have seen, begins at home, and it rather forbids us to prefer the needs of outsiders to our own and to the needs of our family. We are, as a general rule, only bound to give alms out of our superfluity, "That which remaineth give alms."[1] Some theologians maintain that this precept imposes an obligation of giving all one's superfluous wealth to the poor; but others hold that this is only of counsel, that the precept is a general one directed to all the rich, and that it will be fulfilled if each gives something of his superfluity so that the necessities of the poor may be relieved by the common contributions of all. How much must be given according to this opinion depends upon circumstances, and is better left to the judgement of a prudent man after due consideration of all the circumstances of the case.

4. When our neighbour is in extreme or almost extreme necessity we are under a grave obligation of helping him even out of what is necessary to support our position in life, provided that it can be done without impoverishing ourselves or being compelled to give up our reasonable and justly acquired style of living. We are not obliged to pay large sums of money to ransom a captive from the hands of bandits, or to send a sick pauper to the Riviera for the winter; we should not be obliged to take such extraordinary means even to preserve our own life.

5. We are also under a grave obligation, according to the common teaching of divines, of helping the poor who are in grave necessity out of our superfluity. It is difficult to reconcile the words of Holy Scripture with any more lenient doctrine on this point.[2] However, we should be slow to decide that in any particular case a rich man has sinned mortally by refusing to help one in grave necessity. For although there be a grave obligation occasionally to help the poor in serious want, it cannot be concluded that a grave obligation binds any one particular person to assist all such; that would be an impossible burden. Furthermore, in practice it is frequently difficult to decide when a man is in grave necessity, and whether he will not be more conveniently helped by someone else. Besides, there are not wanting theologians who teach a more lenient doctrine as to the gravity of the obligation of assisting those who are in grave need.

A rich man cannot be excused from sin who makes it a practice never to give anything in alms on the plea that the poor can go to the workhouse, and that he pays his poor rates.

[1] Luke xi 41. [2] Matt. xxv 41; 1 John iii 17.

For cases of grave and sometimes of extreme necessity arise where it is practically impossible to seek relief in the workhouse; and wherever there is a case of true necessity there is an obligation to help as far as one can.

6. The rich are also under an obligation of sometimes helping those who are in common necessity, for the texts of Holy Scripture seem to refer to cases of ordinary need such as are commonly met with, and if no one ever helped the poor, their lot would soon become desperate. A man, therefore, who makes it a rule never to give alms to ordinary beggars certainly commits sin; he is not obliged to help all who apply, but out of his superfluity he must help some. It is a disputed point among theologians whether this obligation binds under pain of mortal or venial sin only. The severer view is the more common, but the milder is defended by many approved authors, on the ground that the necessity of the common beggar is tolerable, and is not so irksome as to impose on others a grave obligation of helping him.

CHAPTER V

ON FRATERNAL CORRECTION

1. By fraternal correction is meant a brotherly admonition given out of charity to a sinner to induce him to amend his ways. If such brotherly admonition is likely to do good and have its effect in procuring the amendment of the delinquent, charity requires that it should be given; for if charity obliges us to assist our neighbour when he is in temporal need, much more does it oblige us to do what we can for one who is in spiritual necessity. Our Lord, too, insisted on the fulfilment of this duty: "But if thy brother shall offend against thee, go, and rebuke him between thee and him alone. If he shall hear thee thou shalt gain thy brother."[1] This obligation is of itself grave, as it belongs to the grave precept of charity, and like charity it binds all men. However, as we shall see, there are several conditions to be fulfilled in order that this precept may oblige in the concrete, and in practice private persons are rarely compelled under grave sin to exercise fraternal correction. Bishops, parish priests, and others who have the cure of souls, as well as parents, are more frequently obliged under pain of mortal sin to admonish those committed to their charge.

2. Theologians enumerate the following conditions as requisite in order that there may arise an obligation of giving fraternal correction:

(*a*) It must be certain that a grave sin has been committed and that the delinquent has not corrected and will not of himself correct his fault. There is no general obligation to correct the venial sins of anothe raccording to a very probable opinion; in religious communities, or in other circumstances where uncorrected venial sin might lead to serious relaxation of discipline or other harm, superiors are sometimes bound under grave sin to correct venial faults, or even faults against the rule which are not necessarily sinful. The grave sin must be certain without the necessity of making inquiries, which would be unwarrantable in a private person.

(*b*) If there is someone else who can and will give the necessary admonition, the obligation will not rest upon me.

[1] Matt. xviii 15.

(*c*) There must be a reasonable expectation that the admonition will do good; there is no obligation to do what is useless. Neither should it be given if it is doubtful whether it will do good or harm.

(*d*) As charity does not bind with relatively serious inconvenience to one's self, there will be no obligation to correct another if this cannot be done without serious inconvenience. This rule applies to such as are bound only out of charity to correct others fraternally; Bishops and priests are bound to do so also in justice, which obliges more strictly than does charity.

3. Our Lord not only inculcated the duty of fraternal correction,[1] but he taught that in the first instance it was to be done in private, then in the presence of witnesses, and finally the delinquent was to be denounced to the public authorities in order that public morality might be safeguarded and the sinner more effectually corrected. This order should, of course, be followed *per se*, for charity and justice demand that our neighbour's secret fault should not be made known to others except in special cases and for good cause. However, cases are not infrequent in which it is lawful to denounce a delinquent immediately to the superior without first attempting to correct him fraternally. Such cases are the following:

(*a*) If the sin be public, the sinner's reputation is not injured unjustly by at once informing the superior, which accordingly may be done.

(*b*) If the paternal admonition of the superior will in all likelihood be more sure and efficacious than the fraternal correction of a private person, the superior may be immediately informed as a father, whose duty it is to correct his children for their good, not as a judge, whose duty it is to safeguard public interests by punishing crimes.

(*c*) If harm threatens the community from the action of the delinquent, and it can only be effectually prevented by the intervention of the superior's authority.

(*d*) If the delinquent be one of a religious community whose members have voluntarily renounced their rights in this matter, and agreed that anyone who becomes aware of their faults may straightway inform the superior, such a one suffers no injury if the rule be acted on. However, even in this case there must be good reason for making the fault known to the superior, such as the sinner's correction, the good name of the community, the preservation of discipline. If the sin was

[1] Matt. xviii 15.

committed in the past, and there is now no good reason for making it known to the superior, it would be sinful to make it known to him. Religious have a right to their reputation.

Sometimes members of communities, and boys or girls at school, who know that serious harm to morals is being done by a black sheep among the flock, are bound under penalty of grave sin to give information to superiors so that the suitable remedy may be applied. Such cases require careful treatment from the confessor, who is bound to instruct his penitents concerning their obligations, and to refuse them absolution if they are not prepared to fulfil those obligations which bind them under penalty of grave sin. On the other hand, the seal of confession must be safeguarded at any cost.

4. It is the better opinion that private persons are not regularly obliged to admonish another for committing a material sin through ignorance or inadvertence. Sometimes, however, harm would follow even if material sin were to go uncorrected and, inasmuch as charity requires that we should prevent harm when we can, in these cases admonition should be given. Those also who are placed in authority and have the duty of instructing their subjects, preventing scandal, and maintaining discipline, are bound to correct even the material sins of those under their charge.

CHAPTER VI

ON SCANDAL

1. SCANDAL in its theological sense is any word or action which has at least the appearance of evil and is the occasion of sin to another. This is the received definition of active scandal. Passive scandal is the sin which another is led to commit through active scandal. It is quite immaterial whether passive scandal be a sin of the same species as the scandal which caused it or not; a priest who gets drunk may cause scandal by inducing others to follow his example, or by causing others to speak ill of priests or of the Catholic Church.

Scandal is direct when it is foreseen and intended. If it is intended precisely in order that another may fall into sin, it is called diabolic; if it is intended on account of the advantage it will bring to him who gives it, it is simply direct scandal.

Indirect scandal is foreseen by him who gives it, but it is not intended.

Scandal of the weak is caused by the ignorance or frailty of him who suffers it; pharisaic scandal is caused by his malice, as was the case with the Pharisees taking scandal at the words and actions of our Lord and his Apostles.

2. Giving scandal is of itself gravely sinful, as it is against charity; and it is a special sin against the precept of fraternal correction which obliges us to do what we can to rescue a fallen brother, whereas one who scandalizes his brother causes him to fall.[1] Although of itself scandal is a grave sin, it is frequently only venial in the concrete. The gravity of the sin is not measured by the malice of the sin which causes scandal, but by the malice of the sin which he who gives scandal foresees will certainly or at least probably be caused in another. Thus a gravely sinful word or act may be a venial sin of scandal, and a venially sinful word or act may be a grave sin of scandal. It is plain, too, that not every sin committed in the sight of others is a sin of scandal, but then only when it is foreseen that at least probably it will cause others to commit sin.

3. There is a twofold malice in sins of direct scandal; such sins are against charity and also against that special virtue

[1] Cf. Matt. xviii 7.

which he who suffers scandal violates. So that when A incites B to drink to excess, A sins against charity and against temperance, which not only prescribes moderation in one's own actions, but forbids one to be the cause of its violation by another.

The question whether indirect scandal in the same manner also contains a twofold malice is disputed among theologians. The negative opinion is probable, for although the virtue of temperance, for example, forbids me to induce another to sin against it, and I violate temperance if I do so, yet temperance does not require of me that I should prevent others from sinning against it; I may sin against charity if I do not try to prevent a sin of intemperance in another, but I do not sin against temperance. And so when indirect scandal is given, thereby causing another to drink to excess, there is a sin against charity; but the sin of scandal does not contain in addition the malice of a sin against temperance.

When A solicits B to commit sin with him and B consents, both sin against charity and also against the virtue which is specially violated; so that although solicitation causes A's sin to be greater, it does not constitute a specific difference, and need not be confessed.

4. If I foresee that scandal is likely to be caused by an action of mine which has the appearance of being wrong, but which in fact is perfectly lawful, I am under the obligation of removing the danger of scandal by explaining my conduct, or omitting the action altogether if I can do so conveniently. If I cannot explain or omit the action without serious inconvenience, I am justified in performing the action and permitting the scandal, for charity does not bind to one's own serious inconvenience.

5. On the other hand, I am not justified in omitting an action which is prescribed by the natural or divine law on account of the scandal which the action would give, and so when God's honour or the salvation of my neighbour or my own requires that I should make public profession of the faith, I am bound to make it though my profession will make the enemies of the faith blaspheme.

Even a positive precept does not cease to bind on account of a general fear of scandal; whether it ceases to bind or not on account of scandal in a particular instance is a disputed point. Some theologians maintain that if a woman knows that her presence at Mass is a cause of grave sin to another and she cannot hear Mass elsewhere, she is obliged to abstain

from hearing Mass at least for a Sunday or two, because the natural precept of avoiding scandal is more important than the positive precept of hearing Mass on Sundays. Others, on the contrary, hold that inasmuch as the scandal is taken and not given, the obligation of hearing Mass does not cease to bind in such a case. Practically, therefore, one is free to follow either opinion. This disputed question refers to scandal of the weak, for positive precepts do not cease to be obligatory on account of pharisaic scandal.

A good action without any appearance of evil which is not prescribed, and which can without inconvenience be omitted, should be omitted when it would cause scandal. If it cannot be abandoned without some inconvenience, there is no obligation to abstain from it; and so I may receive the sacraments even when they are not obligatory from a priest whom I know to be in a state of sin and unworthy to administer them.

6. If I suspect the honesty of a servant, I do nothing wrong if I leave a sum of money where I know he will see it with the object of finding out whether he will steal it. If he is an honest man, no harm will follow; if he is a thief, my action does not make him one; I do but furnish the opportunity for him to betray himself, and in my own defence I am justified in doing that. It is of course morally wrong to use *agents provocateurs* in order to detect criminals; they are the cause of another's sin, not merely the occasion.

7. If I know that someone has made up his mind to commit sin and there is no other way of preventing him, I may lawfully induce him to be satisfied with some less offence of God than he was bent on committing. And so if a man was determined to commit adultery, I do nothing morally wrong, but rather the contrary, by persuading him to commit fornication instead. Many theologians, indeed, deny this doctrine on the ground that we must not do evil that good may come of it. But there is no question here of doing evil one's self; we are not justified in doing a less moral evil instead of a greater; we must abstain from all evil, great and small. The question is whether it is an evil action to persuade someone bent on committing a great sin to be satisfied with a less. This is denied by those who defend the above doctrine. And reasonably so, for it is a good action to persuade another to do less evil than he was bent upon doing. To lessen evil is surely to do good. This is the more probable view, according to St Alphonsus.[1]

[1] *Theol. Mor.*, 2, n. 57.

CHAPTER VII

ON CO-OPERATION IN ANOTHER'S SIN

1. CLOSELY connected with scandal is the subject of co-operation or participation in the sin of another; indeed, they are often treated of together, but on account of the importance of the latter it seems desirable to devote a special chapter to it.

Co-operation, then, may be formal or material. Formal co-operation is concurrence in the bad action of another and in the bad intention with which it is performed. Material co-operation is the concurrence in the external action of another but not in the evil intention with which it is done.

Co-operation is proximate or remote according as the action of the secondary agent is more closely connected with the action of the principal agent or less so.

One is said to co-operate positively when he does something which influences the action of the principal agent; one is said to co-operate negatively when he does not hinder a bad action which he is bound to prevent.

2. It is never lawful to co-operate formally with another's sin, for it is obviously to wish evil, which is always sinful. Nor is it lawful to co-operate materially with the sin of another when the action of the secondary agent is itself wrong, as is also clear. But provided the action of the secondary agent is not itself wrong, but right, or at least indifferent, and he has no evil intention, and furthermore there is a just cause for permitting the sin of the principal agent, material co-operation in the sin of another is not wrong. In such circumstances, the secondary agent does nothing that is wrong in itself; he foresees, it is true, that another will take advantage of his action in order to commit sin, but the secondary agent is only bound to prevent this out of charity, which does not bind with relatively serious inconvenience, and this is present whenever there is a just cause for permitting the sin of the principal agent. This is merely the application of the principle of a double effect which was laid down in the Book on Human Acts.[1]

The cases to which this doctrine may be applied are very

[1] St Alphonsus, lib. 2, tract. 3, n. 63.

numerous, but the safe application is difficult and attended with risk. The chief difficulty lies in determining the gravity of the cause which will justify one in co-operating materially in another's sin. No general rule can be laid down on the point beyond saying that a graver cause is required when there is question of a graver sin, when the co-operation is more proximate, and when it is more probable that the sin would not be committed at all if the co-operation were denied. The following examples taken from approved authors are given as illustrating the application of the doctrine, and they may be used to show what may be done in similar cases.

(*a*) I may lawfully ask for the sacraments from a bad priest, though he commits sin in administering them, for he need not sin thereby unless he likes, and his malice should not deprive me of the benefit of the sacraments to which I have a right.

(*b*) A dealer may sell to all buyers things which are in themselves indifferent, though they can be put to a bad use, as firearms, unless he is certain that they are required for a bad purpose. Even in the latter case a correspondingly serious inconvenience or loss will excuse his selling, especially if his refusal will not hinder the sin on account of the buyer being easily able to procure what he wants elsewhere.

(*c*) Intoxicating drink may not be sold to one who has already had too much. Many authors, however, allow this to be done when it cannot be refused without provoking to violence and quarrelling. This excuse would rarely avail in England at present, because the law forbids such sale, the strong arm of the law thus being on the side of morality.

(*d*) It is not lawful to sell things of which the use is ordinarily sinful, except when their lawful use is guaranteed. And so booksellers are not allowed to sell infidel or immoral books except to such as require them for good reasons and with the requisite permission. The same doctrine applies to drugs and instruments used for immoral purposes, as well as to poisons. Publishers, too, sin by publishing books which are dangerous to faith or morals. Compositors and others employed in printing should not work for firms which are known to publish bad books; as they are usually ignorant of the nature of the work which they help to bring out, their ignorance, the remoteness of their co-operation, and the ease with which other workmen can be found to supply their place, will ordinarily excuse them from sin if an odd bad book or two are published by an otherwise respectable firm.

(*e*) Dancing may be a perfectly innocent amusement and it may be a dangerous occasion of sin. No general rule, therefore, can be given as to when dancing must be avoided. Much depends upon the company who join in the dance, upon the way of dancing, and upon the subjective disposition of the dancers. If there be nothing objectionable in any of these respects, there is no reason why a young man or a young woman should not be allowed to dance with due caution. If there be ground for objection, and especially if sin has already been frequently committed in similar circumstances, there is an obligation to abstain, unless the occasion of sin is necessary and can be made remote by taking proper precautions. If sin only follows occasionally, there will be no strict obligation to abstain from dancing, provided due precautions be taken in future.

(*f*) The question of theatre-going is settled on similar grounds. There are all sorts of theatres and all sorts of plays represented in them, and all sorts of actors and actresses. To go and listen to a bad and suggestive play arouses the passions, leads to sin, and encourages evil in many ways. It will, then, as a rule, be grievously sinful to go to the theatre to see such a play. The confessor will usually be able to judge best whether in any particular case it is lawful to go to the theatre by asking whether in the past it has frequently led to sin. If it has done so, it is a proximate occasion of sin, and must be avoided as far as possible. In other cases, unless the play or the theatre is known to be bad, there will be no strict obligation to refrain from going.

BOOK VI

PRECEPTS OF THE DECALOGUE

PART I

THE FIRST COMMANDMENT

CHAPTER I

THE MATTER OF THE COMMANDMENT

THE great precepts of the natural law which binds all men are summed up in the Ten Commandments given by God to the Israelites, which our Lord declared that he came not to destroy but to fulfil. They bind all men, and they will continue to do so as long as human nature is what it is; if only they were observed, the blissful state of happiness of which poets have dreamed, and reformers have striven in vain to bring about, would indeed be realized on earth. The first three Commandments lay down our duty toward God and constitute the first table; the rest, forming the second table, contain our duties toward our neighbour and our self-regarding duties.

The First Commandment, in the words of Exodus, is: "I am the Lord thy God . . . thou shalt not have strange gods before me."[1]

Here God solemnly declares to us that he is our Lord God from whom we have all that we possess, on whom we depend absolutely, to whom we altogether belong. From this, our essential relation with God our Creator, is derived immediately our duty to worship him as our first beginning and last end. The fact that we derive our bodily origin under God from our parents lays upon us certain obligations in their regard; similarly, our relation to God imposes on us our highest duty of worshipping God, our Creator.

The acts of this worship, which natural reason thus prescribes, belong to the virtue which theologians call religion. They are acts such as prayer, worship in the stricter sense, sacrifice, offerings, tithes, vows, oaths, etc. Most of them will be more suitably treated of elsewhere; in this part we will consider the subject of prayer and worship, and then the chief sins against the virtue of religion.

[1] Exod. xx 2, 3.

CHAPTER II

ON PRAYER

1. PRAYER sometimes means any pious affection by which the mind and heart are raised to God. More strictly, it is the petitioning of God for what we stand in need of, and this is called the prayer of petition to distinguish it from the more general signification of the term.

Mental prayer is made with the internal faculties of the soul, while vocal prayer is made with the lips also.

Public prayer is offered in the name of the Church by authorized ministers in forms approved by the Church; all other is private prayer. Public worship is subject to the authority of the Church, which has regulated it by a large body of laws and decrees. Unauthorized forms of prayer may not be used in public worship, and it has been prescribed that only the litanies which are found in the Breviary and in the more recent editions of the Ritual, or such as have been specially approved by the Holy See, may be used in public. Moreover, no litanies may be published even for private use without the approbation of the Ordinary (Can. 1259).

2. For adults, prayer is a necessary means of obtaining salvation; for there are certain graces necessary for salvation, such as final perseverance, which God only grants in answer to prayer, as St Augustine teaches.[1] Prayer is also of precept: "We ought always to pray and not to faint."[2] This precept is grave of itself, and for its fulfilment requires that we should pray frequently. Beyond saying this, it is difficult to determine precisely what neglect of prayer is required for a mortal or a venial sin. It would seem certain, however, that grave sin would be committed by altogether neglecting prayer for a whole year. The faithful rightly accuse themselves in confession when they have omitted morning or night prayers, for those times are the most suitable for fulfilling this duty, and if no prayers are said then, they will hardly be said at other times; moreover, the omission will usually be due to sloth or carelessness about spiritual things.

3. Our Lord promised that prayer when rightly made

[1] *De bono persev.*, c. 16. [2] Luke xviii 1.

would be heard by God: "I say to you, Ask and it shall be given you: seek and you shall find; knock and it shall be opened to you."[1] We learn from his teaching and from the nature of prayer what qualities it must have in order to be acceptable to God and heard by him. The object prayed for must be necessary, or at any rate useful for salvation. Not only spiritual blessings are proper objects of prayer but temporal blessings as well, as far as they conduce to the welfare of the soul. Prayer must be persevering: God has promised to hear prayer, but he has not promised to hear it at once. The time must be left to his wisdom and providence with due conformity to his holy will. Prayer must come from a humble heart, in which faith, hope, and charity dwell, in order to merit the promises of God. Moreover, God will not do violence to man's free will, and so if prayer is offered for someone else, its effect to some extent depends on that person's dispositions and free will. He may, if he pleases, put obstacles in the way, which will prevent the prayer from obtaining the precise effect wished for in his regard. Theologians conclude that prayer must be made for one's self in order to be infallibly heard by God.

4. We are obliged by precept only to pray to God, unless we admit with the common opinion that anyone who should never pray to the blessed Virgin Mary would sin venially by neglecting so powerful a means of salvation. We may, however, lawfully and with fruit pray to the angels and saints, more probably to the holy souls detained in purgatory, and in private to anyone whom with reasonable certainty we believe to be with God in heaven, that they may intercede with him for us.

5. We should pray for all men whom it will benefit without excluding anyone in our private prayers. It is useless praying for the damned, and the Church forbids her ministers to pray publicly for those who are excommunicated.

[1] Luke xi 9.

CHAPTER III

ON WORSHIP

1. WORSHIP here signifies any external action by which we show deference and respect to another. Such an act is grounded on the persuasion that the person honoured is worthy of our esteem, and that it is proper to mark our esteem by such an external act of deference.

If the qualities which command our respect belong to the sphere of civil life, our worship is civil; if they belong to the sphere of religion, it is religious worship. Religious worship which is paid exclusively to God on account of his infinite and uncreated excellence is called by divines *latria*. That paid to the saints is called *dulia*, while the special worship with which we honour the blessed Virgin Mary, the Mother of God, on account of her created but pre-eminent excellence is called *hyperdulia*.

Worship is absolute when the excellence which grounds our esteem is in the object honoured; it is relative when paid to some object on account of its connection with a person worthy of our esteem and honour.

2. In this chapter we will briefly consider the regulations of the Church with regard to the worship of the saints, their relics and images, and the principles which underlie that worship. We suppose the truth of the Catholic doctrine on this subject—that the worship which the Church authorizes to be paid to the saints, to their relics and images—is lawful, praiseworthy, and meritorious. In the first place, then, we are allowed privately to show that inferior worship, which is called *dulia*, to anyone whom we know with moral certainty to have died in the grace and friendship of God. We may also show marks of relative worship to anything connected with him during life. It is evident that there is nothing reprehensible in such worship; the world is accustomed to show similar marks of its esteem to its great statesmen, generals, poets, and inventors. The Church does not interfere with private worship provided there is nothing in it that is objectionable.

3. Public worship, however, is subject to the authority of the Church, and she regulates it both as to its manner and

objects. No signs of public worship may be used besides those which are sanctioned, nor may the accustomed and approved signs of honour be shown to any except those who have been canonized or at least beatified by the Holy See. Only the saints, not the beatified, are invoked in the public litanies, and ordinarily it is not lawful to erect churches or altars in honour of the beatified; this mark of honour is reserved for the canonized saints. The pictures of the saints are painted with aureoles, those of the beatified with rays. With the permission of the Ordinary it is not forbidden to place statues of men who have not been canonized or beatified in our churches provided there be no marks of religious worship shown them; and paintings of such men may, under the same condition, be placed on the walls or windows of a church. Such paintings, however, may not be placed over an altar.

4. The Church is very careful to guard against abuse and fraud in the worship of the saints, their images and relics, as is shown especially by the wise decree of the Council of Trent on the invocation of the saints and the veneration paid to their relics and images (sess. 25). In that decree it is specially prescribed that no new relics or miracles are to be admitted except with the Bishop's approbation after making a diligent inquiry into the truth of the matter. The question of the authenticity of relics is one of fact and proved by the ordinary rules of evidence. When there seems to be moral certainty of the genuineness of a relic, the Church permits relative honour to be paid to it on account of the spiritual excellence of the person with whom it was connected. The honour is thus referred to the person of the saint and to God who is glorified in all his saints. It is quite possible for mistakes to be made about the genuineness of a relic; the infallibility of the Church does not enter here. When a mistake is detected, of course the honour previously paid to a false relic should stop. No one need be scandalized or distressed when any such discovery is made. The merit of the worship previously paid in good faith is not lost; the saint whose relic it was supposed to be was really honoured by marks of devotion shown to it out of love for him. It is as if a devotee of Shakespeare were to keep a bust in his room, and show it marks of honour because he supposed it to represent the great poet; if he found out that it was a bust of Thomas Cromwell, he would be disappointed, but neither he nor Shakespeare would have suffered any great loss.

CHAPTER IV

ON SUPERSTITION

SINS may be committed against the virtue of religion by excess or by defect in the same way as against other moral virtues. Sins against religion by excess come under the general term of superstition, of which there are several species. For the sin of superstition may be committed by worshipping the true God in the wrong way or by worshipping false gods. We will first briefly treat of the wrong ways of worshipping the true God, and afterwards of worship paid to false gods.

SECTION I

Wrong Ways of Worshipping God

1. God may be wrongly worshipped either by false worship or by superfluous worship being paid him. Worship of God is false when its meaning is not in accordance with fact, or when the falsehood is in the person who performs the act of worship, as when a layman performs the duties of a priest, or when someone tries to gain credence for false miracles or false relics. The ceremonies and practices of the Jewish religion signified that the Messiah was to come, and so now, after the coming of our Lord, they could not be employed without superstition. Inasmuch as falsehood in religion is a grave injury to God, this species of superstition is mortally sinful.

2. Anything in the worship of God which does not tend to his honour and glory, or which is against the ordinances and practice of the Church, to whom the regulation of religious worship exclusively belongs, is superfluous worship and superstition. This sin is committed by attributing an infallible effect to a fixed number of prayers or acts of piety, or to the mere material wearing of scapulars or medals, or by unwarrantably acting against the rubrics while saying Mass or administering the sacraments or sacramentals of the Church. The intention of the Church is that scapulars, medals, and other pious objects should be used by the faithful with confidence in the goodness and power of God, whose aid is invoked

on the wearers by the blessing of the Church. Ordinarily, however, this kind of superstition will not be more than a venial sin.

Section II

On Idolatry

The sin of superstition is also committed by giving divine honour to false gods. This is done by idolatry, divination, vain observance, and magic.

By material idolatry divine worship is given to a creature through fear or for some other reason merely externally, without any intention of honouring it as God. It is a grave sin, for it is directly against the obligation of making external profession of the faith, and contains the grave malice of a lie in matters of religion.

Formal idolatry is perfect or imperfect. The former consists in honouring a creature as God, falsely thinking it to be God. The latter knowingly honours a creature as God, without any excuse of ignorance, out of hatred towards him, or wishing to obtain something thereby. Both are grievous mortal sins, but the latter is the more grievous on account of the greater knowledge and malice.

Section III

On Divination

1. We here suppose that the devil, a wicked spirit of great intelligence and power, but subject to God, exists and continually interferes in the affairs of men in order to ruin them. This truth belongs to the Catholic faith and cannot be denied without sin. The sin of divination is committed when the devil is invoked expressly or tacitly in order to discover what is secret and hidden. There is express invocation of the devil when his aid is expressly implored. The devil is tacitly invoked when altogether inadequate means are used to find out what is occult, means which are not sufficient for the purpose naturally, and which have not been ordained by God for that purpose. The devil is eager to be appealed to in order the more easily to attain his own ends, and anyone who uses such inadequate means to find out hidden secrets virtually appeals to the devil to help him. A great variety of such means of divination has been in use from the earliest times among all nations; and periods which have witnessed a decay

of faith have also witnessed a recrudescence of these superstitions. The following are some of the better known methods of divination practised from the earliest times. The devil sometimes takes possession of the body of a human being and manifests what is secret through it; this was called pythonism. The devil had his prophets as God had. In necromancy the devil answers through the dead called to life again. At certain places he gave oracles through idols. Sometimes he communicated with men through dreams. In all the foregoing methods we have the express invocation of the devil. He is tacitly invoked when the lines of the hand are consulted as indications of the future, as is done in chiromancy; or the course of the stars, as in astrology; or the flight or song of birds, as in augury; or some chance event is taken as foretelling what is going to happen, as in omens.

2. Divination is mortally sinful, for it is a great insult to God to hold intercourse with and seek aid from the devil, his bitter enemy; and, besides, it is most dangerous to the parties concerned. He is wont gradually to insinuate himself until he has his victim within his power, and then he works on him his evil will. Such practices as those of divination are specially declared to be hateful to God in Holy Scripture: "Neither let there be found among you anyone that shall expiate his son or daughter, making them to pass through the fire; or that consulteth soothsayers, or observeth dreams and omens, neither let there be any wizard, nor charmer, nor anyone that consulteth pythonic spirits, or fortune-tellers, or that seeketh the truth from the dead. For the Lord abhorreth all these things, and for these abominations he will destroy them at thy coming."[1] Although tacit as well as express divination is grievously sinful of itself, yet it is frequently only venial on account of the ignorance and simplicity of those who indulge in it, or because they do not entirely believe that the future can be known by such methods, and they use them in joke or out of curiosity. In this way young people who consult gipsies or palmists are ordinarily excused from grave sin.

3. We know from Holy Scripture that almighty God has sometimes made known his will to men by means of dreams, and the devil, too, is able to fill the mind with his suggestions during sleep. If God in some rare instance uses dreams to make known his will, he should of course be lovingly obeyed. The suggestions of the devil, on the contrary, should be repelled and despised. We can distinguish between the two

[1] Deut. xviii 10-12.

sources by observing whether the impulse received is towards good or evil, whether what is suggested is worthy of God, whether it tends to disturb our peace or leaves us tranquil and disposed to the service of God. Dreams have ordinarily a natural cause, but they are no indication of what the future will bring. We may not, then, guide our conduct by dreams; God has given us our reason and the Church to teach us what we should do; we must follow these and not dreams if we would act aright. Constantly to guide ourselves by dreams would be mortally sinful, to allow them to influence us occasionally and in matters of little moment would not be more than a venial sin.

4. There is no harm in casting lots to decide a doubtful claim; the parties merely agree to stand by what turns up by chance. It is superstitious and sinful to cast lots in order to discover some secret, or with a view to shaping one's life according to the issue. Sometimes this method of deciding doubts has been adopted by holy men in consequence of an intimation received from God, or sometimes because no better way out of the difficulty appeared.

The use of the divining-rod under the belief that a stick of a special shape cut from a particular kind of tree or bush will point out hidden treasure, or mines, or springs of water, is superstitious and sinful. For it is certain that there is no natural force which acts in the arbitrary manner in which the divining-rod is said to act under the circumstances. It is not impossible but that particular individuals may be very sensitive to the presence of water or minerals even when hidden under the surface of the earth, and perhaps the frequent finding of springs by dowsers is partially to be explained in this way. Then by practice and experience a power of detecting the presence of underground water from the vegetation or other signs on the surface may be developed. There is also without doubt a great deal of fraud in such matters. Finally, the devil may sometimes intervene.

5. Modern spiritism is obviously the pythonism, necromancy, and other forms of divination which have been mentioned above. It is gravely sinful, therefore, to act as a medium or to consult one with a view to finding out something which is not known. Crystal-gazing, table-turning, the use of the planchette for occult purposes, is also divination and grievously sinful. It is not impossible that the movements of the table in table-turning and of the planchette are due to the unconscious action of the sitters. On this hypothesis it

would not be unlawful to make experiments with a view to finding out the truth; divination comes in when by such means the sitters seek to discover what it is certain none of them knows, consciously or unconsciously.

It is well to bear in mind a remark which St Thomas Aquinas makes after St Augustine, that the devil wishes to excite among men a greater curiosity about occult matters "so that being implicated in these observances, they may become more curious and get themselves more entangled in the manifold snares of pernicious error."[1]

Section IV

On Vain Observance

1. The term *vain observance* is used by theologians to designate various kinds of superstition by which altogether disproportionate means are employed to procure a sure and certain effect. It comprises the use of charms, spells, and cabalistic signs, which are used to preserve persons and things from harm, or cure wounds and diseases, or acquire knowledge without the labour of study. It also signifies the superstitious observance of chance events and days, some of which are considered lucky, others unlucky. Magic is the art of wonder-working by the help of the devil.

2. Vain observance, or witchcraft and magic, is gravely sinful for precisely similar reasons as divination is. There is only an accidental difference between these kinds of superstition, for while divination uses disproportionate means to discover what is hidden by the help of the devil, witchcraft uses disproportionate means to obtain certain and wonderful effects by his help. Morally, therefore, there is no difference between divination and witchcraft. Like divination, witchcraft may contain an express or tacit compact with the devil, and although if the compact be express there will always be mortal sin, there will frequently be only venial when the compact is tacit. Ignorance or good faith or want of full confidence in the effect will in that case frequently excuse from serious sin. Moreover, there must be advertence to the total inadequacy of the means to obtain the effect desired, and to the danger of the devil's intervention, otherwise there will not be the sin of superstition. And so people who do not like to undertake any journey on a Friday, or to sit down with thirteen

[1] *Summa Theol.*, 2-2, q. 96, a. 3, ad 2.

at table, because they have always heard that it is unlucky, and because their fathers had similar scruples, may often be excused from sin.

3. In a case of doubt whether a particular effect is to be ascribed to natural causes or not, we should rather ascribe it to natural causes than to the devil, for we must not bring in the preternatural without necessity, and we do not yet know all the forces of nature. Thus many believe that telepathy really exists and is due to natural causes. In such a case of doubt, then, we may experiment and investigate the matter; it is advisable to renounce all intention of dealing with the devil as a precautionary measure. If, on the contrary, it is certain that the effect is not attributable to natural causes, it should be ascribed to the devil rather than to God in case of doubt; for God does not work miracles without good reason, and ordinarily the sanctity of the person concerned and other circumstances clearly show divine intervention when it takes place.

4. Many theologians hold that the phenomena of hypnotism are due to preternatural causes, and consequently they maintain that it is unlawful to induce the hypnotic state or to have any part in it. Others more probably think that the state itself and the susceptibility of the hypnotized subject to suggestion on the part of the hypnotizer, together with those phenomena which affect the bodily organs and the imagination, are due to natural causes. The rarer phenomena of clairvoyance by which scenes and passing events at a great distance are seen, or by which an ignorant medium shows knowledge which is not possessed in the normal state, must be attributed to preternatural causes. For it seems impossible that natural forces should be able to produce effects altogether beyond their range. Even if we admit that the hypnotic state and the bodily phenomena are due to natural causes, it does not follow that anyone may induce the hypnotic sleep merely for the sake of experiment or out of curiosity. Such a practice would be accompanied with grave dangers, moral and physical, and it is not lawful to permit one's self to be deprived of the use of reason, and to subject one's self to another's control, without good cause and proper safeguards. Medical men, however, and other persons of skill and experience cannot be precluded from using a means which is very probably innocent, with proper precautions and for a good reason.

CHAPTER V

ON TEMPTING GOD

1. In this and the two following chapters we will treat of sins against religion by defect. The first of these is tempting God, which a person commits by saying or doing something by way of experiment to discover whether God is wise, powerful, good, or endowed with some other perfection. There is a formal sin of tempting God when there is a positive intention to make an experiment with God; the sin is virtual when that intention is absent, but something is said or done which can have no other meaning than to find out whether God has some perfection or not. Even in this case there must be some reference to God, some desire or wish to implore his help; otherwise there cannot be any tempting of God.

2. Formal tempting of God is a mortal sin, as is obvious; for it is a grave insult to the divine Majesty, who has graciously given men all the knowledge about himself that they require, and it contains the malice of unbelief as well.

3. God is virtually tempted when, contrary to the designs of his Providence, we neglect natural means, trusting that he will give us special help. This too is of itself a grave sin, but it often becomes venial on account of want of knowledge, consideration, or advertence. Thus people are guilty of grave sin who refuse to send for the doctor and will not use the ordinary remedies when they or their children are seriously ill, trusting that God will work a miracle. A preacher who neglected to prepare properly for his sermon, or one who exposed himself to some slight danger through improper trust in the divine help, would only sin venially. After doing what we can, or if we can do nothing, then we may at once with full confidence have recourse to God in our necessities. The trials by ordeal, which were in vogue in the Middle Ages, were in the ninth century condemned by the Church as superstitious.

CHAPTER VI

ON SACRILEGE

1. SACRILEGE is defined to be the irreverent treatment of sacred persons, places, and things. The irreverence consists in doing something which is specially repugnant to the sanctity of the object in respect of its sacred character. A person, place, or thing becomes sacred by being dedicated to the service of God by public authority, for it does not seem possible that the dedication of an object to God by private authority should be able to lay an obligation on others to treat it with the reverence due to sacred things. Such an effect requires public authority.

Objects become sacred in consequence of being dedicated to God's service by an authorized person according to the form prescribed by the Church. Not every form of blessing, however, makes the blessed object sacred. We must distinguish between blessings which invoke the divine favour on the use of certain things, but which do not make them sacred, and blessings which hallow and consecrate the object so that it can no more be lawfully used for profane purposes. Food, or candles, or holy water, which are blessed in the former way, do not thereby become sacred, and may still be used for ordinary purposes; churches, chalices, and baptismal water are consecrated by special blessings and may only be used for the purposes to which they are dedicated (Can. 1147-1150).

The sanctity which belongs to a consecrated person is different from that which belongs to holy places, and this again is different from that which belongs to sacred things. So that the sins by which sacred persons, places, and things are violated are specifically different from each other. Theologians dispute whether these three species of sacrilege contain other lower species or whether they are themselves the lowest. Many of them hold that they are the lowest, and this seems to be the opinion of St Thomas.[1]

2. Sacrilege in all its species is a grave sin of itself, inasmuch as irreverence shown to sacred things redounds to the dis-

[1] *Summa*, 2-2, q. 99, a. 3, ad 2.

honour of God, to whose service they are dedicated. If, however, the matter be trivial, as, for example, some slight irreverence to the Blessed Sacrament, sacrilege will only be a venial sin.

3. Personal sacrilege is committed in three ways:

(*a*) By violating the privilege of the canon, by which it is forbidden under pain of excommunication to lay violent hands on the clergy or on religious (Can. 2343).

(*b*) By violating the privilege of the immunity of the clergy from civil jurisdiction, as far as this is still in force (Can. 120).

(*c*) When persons consecrated to God by the vow of chastity violate their vows. Such persons are all those who are in sacred orders, and all religious who take public vows even though they be simple and not solemn. All sins, therefore, against purity, whether internal or external, which these persons commit, or which others commit with them, are sacrileges. It is a disputed point among theologians whether a private vow of chastity makes the person sacred, so that sins committed against the vow are sacrilegious. Both opinions are extrinsically probable, though the negative view seems more in accordance with what was said above, in keeping with the common teaching of divines. The question is not of great practical importance, since sins committed against chastity by those who are under a private vow have certainly a twofold malice, one against chastity, and the other against religion; and sins against religion are called sacrileges in a wide sense.

4. Local sacrilege is also committed in three ways:

(*a*) By violating the immunity of sacred places as far as this is still in force.

(*b*) By committing certain crimes in a church or public oratory, which has been consecrated or at any rate blessed, by which crimes they are polluted according to canon law. Those crimes are homicide, suicide, any shedding of blood by violence which constitutes a mortal sin, the putting of the church to impious and base uses, and the burial within a church or oratory of an unbaptized person, or of one who has been excommunicated after a condemnatory or declaratory sentence (Can. 1172).

(*c*) By performing certain actions and by committing certain sins which of their nature or by special disposition of law are especially repugnant to the reverence due to holy places. Sacrilege is thus committed by holding a public

market in a church, or a banquet, or using it to stable horses or cattle. There is, to be sure, a special indecency and irreverence in committing any sin in church, but the malice contracted from this circumstance will only be mortal in certain special cases.

On this ground it is probable that only external and consummated sins against chastity contract the grievous malice of sacrilege from being committed in a church; internal or not consummated sins against purity probably do not contract the grave malice of sacrilege if they are committed there.

5. Real sacrilege is also committed in three ways:

(*a*) By treating with irreverence sacred things, such as the sacraments, Holy Scripture, relics, sacred images.

It is a sacrilege to administer or to receive the sacraments in a state of mortal sin, to quote the words of Scripture for the purpose of making an obscene joke, to treat sacred images and relics with contempt.

(*b*) By theft of sacred objects. Sacrilegious theft is committed by stealing a sacred object from a sacred place, or a profane object from a sacred place, or a sacred object from a place that is not sacred, according to an old decree of canon law.[1] In the first of these cases a double sacrilege is committed, local and real, as when a chalice is stolen from the tabernacle; in the last case real sacrilege only is committed, as when a chalice is stolen from a priest's room. Local sacrilege only is committed in the second case, and, indeed, according to a probable opinion, then only when the object stolen belongs to the sacred place, or has been entrusted specially to the sacred place for safe keeping. If a thief picks a pocket in church, his sin probably has not the malice of a grievous sin of sacrilege, although it may be grievous as against justice.

(*c*) By committing the sin of simony, the treatment of which is reserved for the next chapter.

6. Theft of ecclesiastical property or wilful damage done to it is sacrilege, for although the money or other property belonging to the church is not sacred in itself, still by damaging or stealing it an injury is done to those sacred persons, places, and causes that are supported by church property. The private property belonging to a cleric is not ecclesiastical property, but only that which belongs to a church, Religious Order, or pious institution erected by episcopal authority. Theft, therefore, of the private money of a cleric is not sacrilege.

[1] c 21, C. 17, q. 4.

7. It is not lawful, except for clerics or others who have care of them, to touch the sacred vessels which are used to hold the Blessed Sacrament. Palls, corporals, and purificators should after use be washed by a cleric preparatory to their being washed in the ordinary manner. A violation, however, of these regulations would not be a grievous sin of itself; indeed, when there was a just cause, it would be no sin at all (Can. 1306).

CHAPTER VII

ON SIMONY

1. SIMONY derives its name from Simon Magus, who, as we read in the Acts of the Apostles,[1] desired to buy with money the power of giving the Holy Spirit. It is defined to be a studious wish to buy or to sell for a temporal advantage something which is spiritual, or which is annexed to what is spiritual. The terms of this definition are technical and require some explanation.

Simony, then, is said to be a studious wish to buy or to sell, in order to emphasize the fact that although no explicit contract is entered into by the parties, there may still be simoniacal dealing between them. Thus, if a person makes a money present to a priest with the intention of obliging him to give him absolution for his sins in return, he commits a sin of simony, though there is no express bargaining between them.

In simony a temporal advantage is exchanged for something which is spiritual. The temporal advantage may be money and whatever is exchanged for money, or a service rendered, or favour, patronage, and defence. The spiritual object which is given for the temporal advantage is whatever has relation to the salvation of the soul. It may, then, be grace or the gifts of the Holy Ghost, or the sacraments and sacramentals, or prayer, or the use of spiritual power for absolving, dispensing, blessing, excommunicating, and so forth.

Something may be annexed to what is spiritual either antecedently or concomitantly or subsequently. The material of which a chalice is made is said to be annexed to a consecrated chalice antecedently, inasmuch as it existed and had its value before the chalice was consecrated. Something is annexed concomitantly and extrinsically to what is spiritual when it is associated with what is spiritual but only accidentally, as the extra labour associated with singing a late Mass. It is concomitantly and intrinsically annexed to what is spiritual when the connection is necessary, as the labour which must of necessity accompany any spiritual function. A temporal advantage is annexed to what is spiritual consequently, when it follows from and is derived from what is spiritual, as the right

[1] Acts viii 18.

to the revenues of the parish is derived from the office of parish priest. There is no simony in buying or selling what is antecedently annexed to something which is spiritual, provided that the price be not increased on account of the connection with what is spiritual, and provided the Church has not forbidden it. It is lawful to sell consecrated chalices or the fabric of a church for what the materials are worth. The Church has forbidden any money to be received for the holy oils, even so much as the cost of the oil. Similarly it is not simony to receive payment for extra labour spent on some religious function. It is simony to receive money for what is concomitantly and intrinsically annexed to that which is spiritual, for they are regarded as identical. It is also simony to buy or sell that which is consequently annexed to what is spiritual, for the accessory follows the principal.

2. Simony is called mental when no express contract is entered into between the parties. It is purely conventional if the contract has been expressly entered into, but has not yet been executed by either party; it is partly conventional when the contract has been executed by one of the parties. Simony is real when the contract has been executed by both parties to it.

Simony which is committed with reference to the presentation and election to benefices, or the resignation or reservation of them, is called confidential simony, in contradistinction to common simony which is committed in other matters.

Furthermore, simony is of divine law when it is against the law of God; it is of ecclesiastical law when it has been constituted by the prohibition of the Church. For, in order to remove all danger of simony against the law of God, the Church forbids certain contractual dealings where spiritual things are exchanged. Thus it is unlawful without due authorization to exchange benefices, which therefore would be simony by ecclesiastical law. Similarly the Church in certain cases forbids the sale of what is antecedently annexed to some spiritual object. It is thus unlawful to take money for the cost of the material in the holy oils, or to sell blessed rosaries or indulgenced crucifixes and other objects of piety. If this is done, simony is committed, and the objects lose all their indulgences.[1]

3. Simony, like sacrilege, is a grave sin, and if it is against the divine law, it is always mortal. For it is a grave injury to divine things and to God to barter even a small spiritual thing for any temporal advantage whatever. If the simony be merely of ecclesiastical law, it is also of itself a mortal sin,

[1] S.C. Indulg., July 12, 1847.

but inasmuch as it is constituted by ecclesiastical prohibition and a sin of disobedience is only venial when the matter is trivial, there may consequently be venial sins of that simony which is merely of ecclesiastical law.

4. It is not simony to receive stipends for saying Mass according to the intention of the giver, nor to take stole fees on occasion of certain priestly ministrations. The stipends and the fees are not given as the price of the spiritual ministrations, but the occasion of these ministrations is taken for the fulfilment of the duty which is incumbent on the faithful of supporting religion and its ministers. "The Lord ordained that they who preach the gospel should live by the gospel."[1] The amount of these offerings, as well as the occasions on which they are made, are regulated by ecclesiastical law and custom, and no change should be made in these ordinances by private authority. The priest has a strict title in justice to receive them from all who are competent to pay. On the other hand, he has no right to demand more than the authorized amount.

5. The Church has enacted many stringent laws against the crime of simony. Thus by Canon 2392 those who are guilty of the crime of simony in any ecclesiastical offices, benefices, or dignities incur excommunication *latae sententiae* simply reserved to the Holy See. *Ipso facto* they are for ever deprived of the right of electing, presenting, and nominating if they have any. Besides, they are to be suspended if they are clerics. Simony committed in the conferring or reception of Orders and of other sacraments brings the delinquent under suspicion of heresy, and, moreover, clerics incur suspension reserved to the Holy See (Can. 2371).

Simoniacal election to ecclesiastical benefices is null and void, and the incumbent thus elected obtains no right to the revenues of the benefice, which accordingly he is bound to restore to the Church, to the poor, or to his lawful successor, if he has already received them (Can. 729).

If commutative justice has been violated in other simoniacal transactions, restitution must, of course, be made; unless justice has been violated there will be no obligation to make restitution or to rescind the contract, though it was sinful to enter into it. Restitution, then, would have to be made by a priest who exacted more than the accustomed stipend for a Mass, for he has a just title to receive that amount and no more; restitution need not be made when a relic has been sold, even though the transaction was sinful.

[1] 1 Cor. ix 14.

PART II

THE SECOND COMMANDMENT

THE Second Commandment of the Decalogue is, " Thou shalt not take the name of the Lord thy God in vain."[1] It prohibits all irreverent use of the name of God, blasphemy, unlawful oaths, and violation of vows. Inasmuch as it is virtually positive, it commands us always to speak of God with reverence and respect.

CHAPTER I

THE IRREVERENT USE OF GOD'S NAME

WE take God's name in vain and break the Second Commandment when we use the word " God " as an exclamation of wonder or impatience, or merely as an interjection in such phrases as " good God," " my God," " by God." If these phrases are used at fitting times and with due reverence they are, of course, not sinful but meritorious; the sin consists in using them without due reverence, too frequently, and merely as expletives, for such an abuse of the holy name of God shows a want of reverence to him and is displeasing to him.

This irreverence, however, is not grave, and so the sin of taking God's name in vain is of itself only venial; indeed, want of advertence will often prevent it from being even venially sinful. Still, care should be taken to correct any bad habit that may have been contracted in this matter.

What has been said of the name of God may be applied with due proportion to those of our Lord, the Blessed Virgin, and the saints.

[1] Exod. xx 7.

CHAPTER II

ON BLASPHEMY

1. BLASPHEMY is an imprecatory or a contumelious speech against God. Not only words, but actions also, which express contempt, insult, derision, or imprecation against God are blasphemies.

Blasphemy is direct when the dishonour of God is intended; if the dishonour of God is not intended in itself but it is foreseen that it will be the consequence of one's word or actions, it is indirect.

Blasphemy which is against God in his own person is immediate; if it immediately affects some creature which has a special relation toward God it is mediate.

2. Blasphemy is a grave insult to almighty God, and is always a serious mortal sin if it is committed with full advertence and consent. To deny the existence of God, to complain against his Providence and assert that he is unjust, to deny the perpetual virginity of the Blessed Mother of God, are so many heretical blasphemies and grievous sins.

It is a disputed question among theologians whether blasphemy against the saints which is only mediately against God is of the same species of sin as blasphemy which is immediately against him. Many assert that the species is different inasmuch as the honour due to the saints is outraged as well as that which is due to God. Ordinarily, however, it is God who is chiefly dishonoured by insults offered to his saints, and so practically we may follow the opinion of other theologians and hold that there is no specific difference between the two sins.

3. To utter imprecations or to speak injuriously against creatures which have a special relation to God is blasphemy. Thus it is grievously sinful to call down maledictions on one's fellow-men, wishing that they may perish eternally. Such acts are seriously against charity as well as religion. To utter imprecations against brute beasts or other creatures which have no special relation to almighty God is not blasphemy, and will not ordinarily exceed a venial sin. Profane words and vulgar expressions like " damn," " bloody," and so forth,

are commonly used without definite meaning, and at most are venial sins, because they are unbecoming, shock others, or are manifestations of anger and impatience. It is sometimes said that blasphemy is most common where faith is strong, and this may be a reason why real blasphemy is not so common perhaps with us in ordinary conversation as with some nations.

CHAPTER III

ON OATHS

1. AN oath is the calling on God to witness to the truth of what we say. This calling on God may be express or tacit; it is express when God is mentioned, as, " I swear by God "; it is tacit when we swear by some creature which in a special way shows forth the Divinity or has some special relation to him, as, " I swear by the Christian Faith," " by the Gospel," " by Heaven."

In an assertory oath we call God to witness to the truth of a present or past event; in a promissory oath we call him to witness to some future event.

A solemn oath is clothed with the ceremonies prescribed by law, such as holding up the right hand or kissing the Bible; a simple oath is devoid of such ceremonies.

An imprecation is sometimes added to an oath by such words as, " so help me God "; in this case we have an imprecatory oath; otherwise it is an invocatory oath.

2. There cannot be an oath strictly so called unless there be the intention of swearing and a suitable form of words be used which express that intention. One who uses the colloquialism, " I swear it is so," usually has no intention of taking an oath, nor do the words signify an intention of calling on God to witness to the truth of what is said. The same must be said of phrases like " on my honour," " by my faith," " God knows "; and *a fortiori* the mention of fabulous gods, as, " by Jupiter," etc. However, if there be an intention to take an oath, this will be sufficient to make it binding in conscience whatever the form of words may be, so that perjury will be committed if what is asserted is not true. If the form of words is suitable for an oath, the intention to swear is presumed.

3. If the requisite conditions be fulfilled, oaths are lawful, and indeed they are an act of divine worship, for they are an acknowledgement of the omniscience and veracity of God, as well as a public profession of belief in him. This has been the constant teaching of the Church, teaching which has ample warrant in both the Old and New Testament. The prophet

Jeremias lays down the conditions which justify an oath, and many instances of oaths are found in the epistles of the Apostle of the Gentiles. The words of our Lord[1] do not prohibit the taking of oaths if the requisite conditions be present. They give expression to his desire that all Christians should be so truthful and sincere that it will not be necessary for them to use oaths to confirm the truth of what they assert. The conditions which make an oath lawful are given in the words of Jeremias:[2] "And thou shalt swear, As the Lord liveth, in truth, and in judgement, and in justice."

We swear in truth when we are morally certain that what we assert under oath is according to fact. We are not justified in asserting that to be true which we do not know to be true, and we commit the grave sin of perjury if we swear to what we know to be false.

We swear with judgement when there is a just cause for invoking the testimony of God and it is done with proper consideration and reverence. A just cause will be any matter of some importance for the welfare of either soul or body, whether it be public or private. We are not, therefore, justified in swearing to every assertion which we believe to be true; there must be some special reason for employing the name and authority of God to confirm what we say. However, provided that the other conditions are not wanting, the defect of judgement in swearing will not be more than a venial sin, for it is no more than the idle use of the name of God.

It is an insult to God to invoke his testimony to a sinful act or in furtherance of what is sinful. If this is done, the oath is unlawful on account of the want of justice. Justice, then, in this connection requires that the assertion in an assertory oath should not be sinful, such as a sin of detraction or boasting about past sins. In a promissory oath, that which is promised must be honest and lawful.

There is some difficulty and dispute among theologians about the gravity of the sin which is committed when an oath wants justice. If in an assertory oath the testimony of God is unjustifiably invoked to promote a seriously sinful object, the want of justice in the oath will be gravely sinful. If, on the contrary, the testimony of God does not further the end in view, the want of justice will probably be only venially sinful, because the assertion is true, as is here presumed, and the irreverence committed against God by invoking his testimony even to a gravely sinful act does not seem to many to be

[1] Matt. v 34. Jer. iv 2.

more than a venial sin. An oath, therefore, taken to confirm detraction in a grave matter is mortally sinful; an oath confirming a boast about grave sins committed in the past is probably only venial.

Somewhat similarly in a promissory oath, if the act promised be gravely sinful, the defect of justice makes the oath gravely sinful; for it is a great insult to God to use his testimony to further what is mortally sinful. If the act promised is only a venial sin, a probable opinion holds that the oath is only venially sinful, against a more probable contrary view.

4. The effect of a promissory oath is to bind the person swearing to do what he promises by an additional obligation derived from the virtue of religion, which requires that out of reverence for God we should religiously perform what we promised under oath. If we fail to do this in a matter of moment, grave sin will be committed, as all acknowledge. Moreover, as is obvious, if when the oath is taken there is no intention of keeping it, a grave sin of perjury is committed, for perjury is never venial on account of triviality of matter. If, however, when the oath was taken there was a serious intention of keeping it, but afterwards there was a failure to do so in a matter of small moment, a probable opinion holds that such a want of fidelity in a small matter cannot be more than a venial sin.

5. The obligation imposed by a promissory oath is of strict interpretation, and follows the nature of the act or contract to which it is annexed, so that it is dependent on all the conditions and limitations with which law, or custom, or the circumstances invest the act or contract. For a promissory oath is accessory and follows the nature of the principal act to which it is annexed. And so an oath to observe the rules or statutes of a corporation is understood to refer only to those that are in force.[1]

6. An oath should conduce to the service and honour of God; it cannot be a bond of iniquity; and so an oath to do what is wrong is sinful and of no effect. Similarly, an oath to do what is useless, or which hinders greater good, is null and void. In case, however, another party has acquired rights under an oath, justice requires that this should be kept, and so the mission oath, by which a sworn promise is given to serve a particular church or mission, binds a missionary priest even though he is persuaded that he has a vocation to the religious state.

[1] Can. 1318, 1321.

7. In accordance with rules of canon law, an oath extorted by violence or grave fear is valid, but it can be dispensed by an ecclesiastical superior. Moreover, an oath taken without violence or fraud by which one renounces a private advantage or favour granted him by law must be kept as long as it can be kept without sin (Can. 1317, sec. 2, 3).

8. An oath may cease to bind from intrinsic or from extrinsic causes. If circumstances produce a change in the matter of the oath so that it has become unlawful, or useless, or an obstacle to greater good, or if some condition is not fulfilled, the oath no longer binds. The same must be said when the motive of a promissory oath no longer exists, as if I swore to help a poor person with money who subsequently becomes rich (Can. 1319).

An oath may be annulled, dispensed, commuted, or relaxed, in much the same way as a vow, and it will be more convenient to treat of these extrinsic causes for being released from the obligation of an oath in the next chapter, where the doctrine is applicable to vows and oaths alike (Can. 1320).

CHAPTER IV

ON VOWS

1. A vow is a promise made to God about something which is good, possible, and better than its omission.

It is, then, a promise, a contract with God, a deliberate taking on one's self of a new obligation which binds the conscience; and in this it differs from a mere purpose to do better, which imposes no new and special obligation. Such an act must be perfectly human, performed with full knowledge and with complete use of reason, so that a vow taken by a man who was half drunk, or who had not the full use of reason, would not be valid. A vow, however, does not require actual and explicit consent when the obligation is assumed; it will be sufficient if there is virtual and implicit consent. A person who receives the subdiaconate, to which he knows that the Church has annexed a solemn vow of chastity, takes the vow by the very fact of being ordained, though at the time he is not thinking of it.

A vow in the strict sense is an act of divine worship offered to God alone, and so we cannot take a vow to the Blessed Virgin Mary or to the saints.

The matter of a vow must, of course, be something which is lawful and good; it would be an insult to God to promise him to do something wrong. It must be something which is possible, both physically and morally, for there can be no obligation to do what is impossible. A vow, then, to avoid all sin, even the slightest, would be invalid, for without a special privilege of God it is impossible. The matter of a vow must not only be good, but better than its omission or its opposite. For what is promised to God in a special manner and under a fresh obligation must be something that will be pleasing to him, but a promise to do something which had better not be done cannot be pleasing to God, who desires our perfection.

A vow is absolute when it has no condition attached to it, otherwise it is conditional.

A personal vow makes a promise of some action to be performed; a real vow dedicates a thing to God.

Vows are perpetual if the obligation is undertaken for life; otherwise they are temporary.

A solemn vow is one which is invested by the Church with special force and stability, together with certain legal effects; others are simple. The vows taken by religious in regular orders specially approved by the Pope, and by those who receive sacred orders, are solemn.

2. Substantial mistake about the matter of a vow or about the circumstances which are regarded as entering into the substance of the matter invalidates a vow. For substantial mistake hinders consent of the will; consent was given to something which was not there, and so there was no contract. A vow, then, dedicating to God a chalice which is thought to be silver, while in reality it is gold, would be invalid, just as a sale of it would be under the same mistake. Merely accidental mistake about things of little moment which were not really the motive for taking a vow does not invalidate it. However, according to St Alphonsus,[1] it is a probable opinion that a mistake about something connected with a vow, which if it had been known before would have prevented its being taken, is sufficient to invalidate it. This doctrine may be applied to private vows, but it cannot be extended to the vows of religion, which place the religious in a permanent state of life. In order to invalidate these, mistake must be substantial. For just as the perpetuity of the state of marriage, the good of the parties concerned, and the public good, require that only substantial mistake should invalidate marriage, so for the same reasons only substantial mistake invalidates the vows of religion, by which the religious enters into mystical espousals with Christ.

Fear arising from natural causes, provided that it does not take away the use of reason, does not invalidate a vow. If, however, grave fear be unjustly caused with a view to compelling another to take a vow, the vow is null and void (Can. 1307). The same is probably true even if the fear be slight. For God cannot be supposed to accept a promise which has not been freely given, but on the contrary extorted by unjust violence.

3. A vow, as we have seen, imposes a special obligation on him who has taken it to perform what he has promised: "If thou hast vowed anything to God, defer not to pay it; for an unfaithful and foolish promise displeaseth him: but whatsoever thou hast vowed, pay it."[2] If a special time was fixed for the

[1] *Theol. Mor.*, 3, n. 226. [2] Eccles. v 3.

fulfilment of the vow, with the intention that it should be fulfilled then, and at no other time, it must be fulfilled at the time appointed under pain of sin, and it no longer binds after the time has elapsed. If, on the contrary, it was intended that it should continue to bind even after the time fixed had elapsed, then the obligation still remains. The obligation should be fulfilled at the proper and reasonable time, and unreasonable delay will be sinful: "When thou hast made a vow to the Lord thy God, thou shalt not delay to pay it. . . . And if thou delay, it shall be imputed to thee for a sin."[1] It is not clear, however, whether even notable delay in the execution of a vow is always mortally sinful. Notable delay without just cause would be a mortal sin if the obligation of the vow were grave, and if the delay endangered its execution altogether or made the matter of the vow notably less than was promised. On the other hand, if a rich man vowed to give a large sum of money to the poor, assigning no particular time for the execution of the vow, it is probable that he would not commit a grave sin, even if he deferred giving the money until his death, and then gave it by his will. For in these circumstances the matter of the vow is not seriously affected by the delay, which therefore cannot be a grave sin.

The measure of the obligation of a vow is the will of him who takes it, much in the same way as the obligation of a law depends on the will of the lawgiver. Ordinarily it will be presumed that in grave matter, such as the Church considers to be sufficient for a precept to bind under mortal sin, a vow also binds under pain of grave sin, for the intention of him who took the vow is presumed to accommodate itself to the matter. Nothing, however, prevents him from limiting the obligation of a vow even in grave matter, so that transgressions of it will be only venial sins, if he expressly intended it. This, however, must not be understood of the essential vows of religion, nor of the solemn vow of chastity annexed to sacred orders. These vows are regulated by the Church, and according to her intention they bind under pain of grave sin in grave matter. Another exception must be made to the general rule that the obligation of a vow depends on the will of him who takes it; for if the matter be light it cannot form the ground for a grave moral obligation, when this is imposed by a human will. As a contract binds only the parties who agree to it, so no one can be bound by a vow made by someone else. In former times it was not uncommon for parents to vow a

[1] Deut. xxiii 21.

child to religion. Such a vow put no obligation on the child, but the parents were bound by it to give the child the opportunity of entering religion if he desired to do so. There are also instances of communities who have jointly taken a vow to observe a certain day as a fast or a feast. Thus the Romans, in the year 1703, vowed to observe as a fast day the vigil of the feast of the Purification of the Blessed Virgin Mary in thanksgiving for being preserved from an earthquake. The successors of those who took such a vow are bound to fulfil it, much in the same way as they are bound to pay interest on the National Debt. Their predecessors had the power to bind themselves and their successors, for the community remains the same moral entity.

We saw above that the matter of a vow must be something which is physically and morally possible. It may happen that he who took the vow may be able to fulfil it in part only and not wholly. He will be bound to do at least this when the matter is capable of being divided and is usually so treated, for the obligation of the vow then falls on the whole and on its several parts. Otherwise he will not be bound, nor will he be bound to do something which was a mere accessory of the substance of the vow, even if it be possible. And so one who should vow to fast for a week, if he found this impossible, would not be excused from fasting on the days that he could do so. But if he had vowed to build and decorate a church and afterwards found this to be impossible, he would not be bound to build a portion of it, nor to decorate some other church.

4. A vow may cease to bind for intrinsic or for extrinsic reasons. It will cease to bind intrinsically if the matter cease to be a better good or become impossible. Thus if a young man had vowed to enter religion, but his parents afterward became dependent on him so that he could not leave them without a violation of duty, his vow would cease to bind as long as the same conditions lasted. Or if a wealthy man vowed to spend a considerable sum of money in charities every year, if he became poor his vow would no longer bind him. And generally a vow, like any other promise, will cease to bind if circumstances supervene which at the outset would have prevented the vow from being taken. A vow ceases to bind extrinsically if it is annulled or dispensed or commuted. We will treat of these extrinsic causes of the cessation of a vow in the following paragraphs.

5. The annulment of a vow may be direct or indirect. By

direct annulment the obligation of a vow is altogether removed by one who has authority over the will of the person who took the vow. For those who are placed in such a state of dependency on their superiors cannot undertake any absolute obligation; they can only bind themselves conditionally, supposing that their superior consents. If he does not consent, the obligation falls to the ground (Can. 1312).

By indirect annulment the obligation is suspended by one who has authority over the matter of the vow. For it is not just that an obligation should be undertaken which interferes with the rights of someone else. And so if a servant took a vow to hear Mass every morning, her mistress, whose rights are infringed thereby, might suspend the obligation of the vow as long as the servant remains with her, for no service is rendered to God by injuring a fellow-creature. When the term of service expired, the obligation of the vow would revive.

The annulment of a vow will be valid even when it is done without just cause and against the will of the subject, for even then a condition is wanting on which the validity of the vow depended. It will be lawful as well, if there be a reasonable cause, which need not necessarily be a very serious one.

All religious superiors can directly annul the vows taken by their subjects after their religious profession, and indirectly the vows taken by them previously, as far as they prejudice religious discipline or the rights of superiors. The vows of poverty, chastity, and obedience—the essential vows of religion by the taking of which a person becomes a religious—cannot be annulled; for it is only by them that religious superiors receive their authority over the wills of their subjects, and authority is powerless against its own source.

Parents can directly annul the vows of their children taken before the age of puberty, when children become independent of the authority of their parents in matters relating to the service of God. They can indirectly annul the vows of their adult children as long as they continue to live with them.

A husband can directly annul the vows of his wife taken after marriage, and indirectly those taken previously. A wife can annul the vows of her husband only indirectly, as far as they prejudice her rights.

6. A dispensation from a vow is a remission of the vow made in the name of God for a just cause by one who has spiritual jurisdiction in the external forum. The Church has always understood that the power to dispense vows is con-

tained in the authority granted by our Lord to his Church.[1] She exercises this power in the name of God, not arbitrarily, but for just cause, which is required not merely for the lawfulness, but also for the validity of the act. As examples of a just and sufficient cause theologians give the following: the public good or the private spiritual advantage of him who is dispensed; unusual difficulty in the observance of the vow; the fact that the vow was taken without sufficient deliberation or in immature age.

The power of dispensing vows belongs to the public authority granted by God to the Church in order that she may rule and legislate for her people. It does not belong to the power of remitting sins which is exercised in the sacrament of Penance. All ecclesiastical prelates, then, who exercise jurisdiction in the external forum in their own name can dispense from vows, except in so far as their authority has been limited by a superior. Other ecclesiastics can only dispense from vows by delegated authority and according to its terms and conditions.

(*a*) The Pope can for just cause dispense any of the faithful from any vow.

(*b*) For a good reason and provided that the dispensation does not injure the rights of others, local Ordinaries can dispense their subjects and also strangers from private vows which are not reserved to the Holy See. The only private vows which are now reserved to the Holy See are a vow of perfect and perpetual chastity and a vow of entering into a religion of solemn vows, if they were taken absolutely and after the completion of the eighteenth year of age (Can. 1309, 1313).

(*c*) Prelates of Religious Orders have quasi-episcopal jurisdiction over their own subjects, and as a general rule have the same power over these as a Bishop has over his subjects. Besides, they receive by their privileges ample delegated authority to dispense not only their own subjects, but seculars and lay people as well. The privileges granted to the respective Orders should be consulted concerning this special authority and the conditions of its exercise.

(*d*) Parish priests and confessors have no jurisdiction in the external forum, and can only dispense from vows by delegated authority. They should consult their faculties to know what powers they have received from their Bishop.

When a vow has been made in favour of a third person and accepted by him, such a vow cannot lawfully be dispensed without his consent, otherwise justice would be violated. And

[1] Matt. xviii 18.

so, although a Bishop has power to dispense members of diocesan congregations from the vows of religion, he cannot do this lawfully without the knowledge and consent of the superiors of the Order.[1] The religious vows of congregations which have in any way been approved by the Holy See are reserved to the Pope.

The vow of chastity imposes a serious and arduous obligation which should not be undertaken without mature deliberation and knowledge of one's own strength. A confessor should be slow to approve of such a vow being taken, especially if it is to be perpetual. When there is just cause for a dispensation being granted, it is the practice of the Church to commute, rather than altogether to dispense, a perpetual vow of chastity. This practice, though not of obligation, should be adhered to by those who have authority to dispense from this vow. It may be commuted into the obligation of receiving the sacraments at least once a month, saying the rosary every day, or other works of piety.

7. A vow is commuted when another good work to be performed under the same obligation is substituted for that which was promised.

All who can dispense from a vow can also commute it, for the less is contained in the greater. It is obvious, however, that it must not be done to the injury of a third person. The person who is under vow may commute it into some good work which is evidently better than what was promised, for, as the rule of canon law has it, he does not violate his promise who changes it into something better (Can. 1314). He may also commute his vow into something that is of equal merit; but to avoid the danger of self-deception, and because it is not easy to say when good works are of equal merit, it is better to have recourse to one's confessor. Special authority is required to commute a vow into something which is less good, for such a commutation is a sort of dispensation from the vow. In order that commutation into something which is less good may be lawful, a just cause is required, though less than is required for dispensation; probably, however, if there be no just cause the commutation will be valid, but the obligation will remain of supplying the deficiency as in human transactions. No special cause is required for commuting a vow into something which is evidently better; greater readiness in fulfilling one's obligation will be a sufficient cause for commuting a vow into something of equal merit.

[1] Constitution of Leo XIII, *Conditae*, December 8, 1900.

One whose vow has been commuted is always at liberty to return if he pleases to the observance of his vow, for the commutation was made in his favour, and he may renounce it.

When a vow has been commuted by competent authority its obligation is extinguished or transferred to the new work, and it does not revive even if the performance of the substituted good work is found to be impossible. On the contrary, when the substitution has been made by private authority, in case the performance of the substituted work is impossible, the original obligation revives.

PART III

THE THIRD COMMANDMENT

THE Third Commandment is: "Remember that thou keep holy the sabbath day."[1] This precept of the Old Law is partly ceremonial, and in so far it has been abrogated by the preaching of the Gospel, and partly it belongs to the law of nature, which binds at all times and in all places. The sabbath, the day of rest, was the last day of the week under the Old Dispensation, and the manner of observing it was strictly regulated. The natural law prescribes that we should occasionally offer to God an external and public worship, inasmuch as he is the Creator of body and soul and the Author of human society. The necessity, too, of keeping up within us a lively sense of God's existence and of our dependence on him compels us to give outward expression to our religious instincts, otherwise they will quickly evaporate. The Christian Church, using the power given to her by her divine Founder, and asserting her independence of the yoke of Jewish legalism, determined the natural law in this matter by assigning a definite time and mode for its observance. Instead of the last day of the week she chose the first, the day on which Christ rose from the dead, and the day on which the Holy Spirit came down on the Apostles. This she called the Lord's Day, and commanded her children to keep it holy by hearing Mass and resting from servile work.

CHAPTER I

ON HEARING MASS OF PRECEPT

1. ECCLESIASTICAL laws of the early Christian centuries show us that the precept of hearing Mass on Sundays dates from the earliest times. This obligation is grave, for Innocent XI condemned a proposition[2] which asserted the contrary.

[1] Exod. xx 8. [2] Prop. 52.

Besides hearing Mass it is a laudable thing to spend some time on Sundays in other acts of piety and prayer, as all good Catholics do. Still there is no other positive obligation besides that of hearing Mass which binds under sin. It is not a sin, then, to omit evening service or Benediction of the Blessed Sacrament; and when it is impossible to hear Mass, there is no strict obligation to have private devotions instead.

In order to fulfil the precept of hearing Mass according to the mind of the Church, the whole of Mass must be heard, in the proper place, while bodily present where it is being celebrated, with devout attention. Something must be said on each of these points.

2. The whole of Mass must be heard, so that at least a venial sin is committed if one be wilfully absent during any portion of it. The sin will not be grave unless a notable part of the Mass be missed. What is a notable part depends partly on its importance, partly on the length or quantity. Inasmuch as the essence of the Mass in all probability consists in the act of consecration, to be voluntarily absent during the consecration would be mortally sinful; one would not have heard Mass. Certainly it is a grave sin to be wilfully absent during both the consecration and the communion. Up to the offertory is called the Mass of the catechumens, and as this forms a kind of introduction to the Mass proper, to come in only at the offertory probably does not amount to more than a venial sin. We may take it as a general rule that a mortal sin is committed if a third part of Mass be missed, and less is sufficient for a grave sin when any action of special importance in the sacrifice is in the portion missed. In case of involuntary absence during a notable portion of Mass there will be an obligation of making it up by hearing that portion of another Mass if there be an opportunity of doing so on the same day. The consecration, however, and the communion must always be in the same Mass. There is no obligation to make up small portions of the Mass which have not been heard.

A proposition condemned by Innocent XI falsely asserted that one might satisfy the precept of hearing Mass by being present while two portions were being said by different priests.[1]

3. In order to satisfy the precept, Mass must be heard in

[1] Prop. 53.

the proper place. By a decree S.R.C. (January 23, 1899) the faithful may satisfy the precept by hearing Mass in any public church or public or semi-public oratory. A semi-public oratory is there defined as one which by the authority of the Ordinary is erected in a place which is not absolutely public, but more or less private, for the use not of all the faithful, nor of a particular person or family, but of a community or society of persons. No one besides those who are mentioned in the indult can satisfy the precept by hearing Mass in a strictly private oratory, which by an indult of the Holy See is erected in a private house for the use of a particular person or family (Can. 1249).

As Benedict XIV teaches,[1] Bishops cannot compel the faithful to hear Mass in their parish churches; they have no power to abrogate a universal law and custom of the Church or a decree of the Sacred Congregation of Rites. The liberty, however, of hearing Mass in any place of worship except strictly private oratories, does not exempt the faithful from contributing to the support of their own pastors according to their means.[2]

4. One would not hear Mass so as to satisfy the precept if he were stationed apart at a considerable distance from the place where it was being celebrated, even though he might be able to see and hear what was being done. He must be morally present so as to form one of those who are together hearing and offering up the Holy Sacrifice. It is not necessary that he should be able to see the priest or the altar, nor even to hear what is said. It will be sufficient if he follows the principal parts of the Mass. So that a person could hear Mass if he were stationed in a side chapel of a great cathedral while Mass was being said at the high altar, though he might not be able to hear or see anything that was going on. Similarly, if Mass is being said for a large army or crowd of people, those on the outskirts of the multitude may hear Mass, though they are at a great distance from the altar. If the church is full and large numbers cannot get inside, still these latter may hear Mass being celebrated inside. On the other hand, if while Mass is being said in a church, someone were posted on the opposite side of a wide street or square, he could not hear the Mass so as to satisfy the precept, though he

[1] *De Synodo*, xi, c. 14.
[2] 1 West., d. 23, n. 5.

might be able to see what was going on through the open door.

5. It is necessary to have the intention of hearing Mass, and it must be done with the requisite attention. The Church prescribes a human action to be performed in the service of God, and so there must be the necessary constituents of a human act. The act, then, must be voluntary; there must be the wish or the intention to hear Mass. So that one who was forced to be present against his will, or who came to church merely as a companion to another, or to hear the music, would not hear Mass.

Attention is an act of the mind by which we advert to what is going on. This is attention in the proper sense of the term, and is called internal to distinguish it from external attention, which is the avoidance of any external action which is incompatible with internal attention. Thus if one is distracted during Mass and thinking of other things, but does no external action which is incompatible with hearing Mass, he has external, but not internal attention. If during Mass he engages in a prolonged conversation with a neighbour, or reads a profane book, or paints, he has not even external attention.

The Church commands at least external attention while Mass is being said, otherwise the precept will not be fulfilled. All, too, admit that voluntary distractions during Mass are venially sinful, just as they are during ordinary prayer. It is a disputed point among theologians whether internal attention is also necessary for the observance of the Church's law. The more common opinion holds that it is. The contrary, however, is probable, for actual attention does not seem to be an essential element of prayer; the form of Extreme Unction, which is a prayer, is certainly valid even if said by a priest without internal attention. The Church's law, therefore, which directly provides for external decorum in the service of God, would seem to be fulfilled, provided that there is at least external attention while hearing Mass. This opinion does not foster the careless hearing of Mass, but it does serve to relieve the scrupulous conscience from needless anxieties.

6. We have here to do with a positive precept, and any serious inconvenience or loss, spiritual or temporal, affecting one's self or one's neighbour, which would follow from hearing Mass, will excuse the faithful from fulfilling the obligation.

So that the sick, the convalescent who could not venture out of doors without danger, those who have to take care of the sick, mothers of families who have little children to attend to, those who live at such a distance that it would take them more than an hour to walk to church, all these are excused from hearing Mass regularly.

CHAPTER II

ON SERVILE WORK

1. In order that all, and especially the poor, may have the opportunity of fulfilling their religious duties, the Church has forbidden servile work to be done on Sunday. Servile work is the rougher and harder sort of manual labour which is done by common workmen and labourers, and which used to be done by slaves. It comprises ploughing, digging, building, sewing, and similar occupations. It is distinguished from liberal and from mixed work. Liberal work is done mainly by the intellect, and comprises writing, studying, painting, and so forth. Mixed work comprises a class of occupations which are neither exclusively liberal nor servile, but which are done indifferently by all conditions of men. In this class are hunting, fishing, travelling, and similar occupations. Of these only servile work is forbidden on Sundays, and in determining what is servile work, and therefore forbidden, we must consider not only the nature of the work itself, but also the way in which it is done, the light in which it is commonly regarded, and other circumstances. Thus it is usually held that although the rougher work of the sculptor is servile and unlawful, the more delicate is liberal and may be done on a Sunday. Similarly, fishing with rod and line is not unlawful, but going out to sea with a fishing-smack and plying the trade in the ordinary working-day way is forbidden. In the same way one who lives by photography should not ply his trade on a Sunday, but it would not be wrong for an amateur to do the same work on that day by way of recreation and amusement.

2. This part of the precept of keeping the Sunday holy also binds under pain of grave sin. If, however, the matter be light, the doing of a little servile work on a Sunday will be only a venial sin, and none at all if there be good reason for it. According to the common opinion, it would be necessary to work for well over two hours at something which is forbidden in order to commit a grave sin. Still longer time would be required for a mortal sin in doing servile work of a lighter kind, which had for it some sort of excuse on the ground that

it helps on the cause of religion and charity. Making rosary beads or scapulars belongs to this category.

3. Public trading is also forbidden on Sundays, as well as judicial proceedings in the exercise of contentious jurisdiction, and the solemn and public taking of oaths (Can. 1248).

English municipal law goes farther than the law of the Church in its provisions for the due observance of the Lord's Day. Thus not only is Sunday a *dies non* for the sitting of courts or the meeting of public bodies, but contracts such as are within the ordinary calling of tradesmen, workmen, labourers, or other persons of the same sort, made and completed on Sunday, are void, and abstention from work and even from play is required by a series of statutes.[1]

Although these provisions of the civil authority do not impose an obligation in conscience under pain of sin, yet indirectly they have caused the Sunday to be observed among us with greater strictness than is absolutely required by ecclesiastical law.

4. As we saw with regard to the hearing of Mass, so in this matter too, if the precept cannot be observed without serious inconvenience, it ceases to bind. And so, work in foundries or in agriculture which cannot be stopped without grave inconvenience and loss may be done on Sundays. Work, too, in the direct service of religion, or necessary works of charity connected with the care and nursing of the sick, or the burying of the dead, are not forbidden. Custom permits of the sweeping of the house and the cooking of meals, and certain other more or less necessary occupations on Sunday. Finally, ecclesiastical authority can, for good reason, dispense in the observance of this law. Not only Bishops, but priests who have the cure of souls, have discretionary power to give dispensations in particular cases.[2]

[1] *Encyclopedia of Laws*, *s.v.* Sunday.

[2] 1 West., d. 23, n. 1; Can. 1245, sec. 1.

PART IV

THE FOURTH COMMANDMENT

THE Fourth Commandment is: "Honour thy father and thy mother."[1] By this Commandment not only are children bound to be dutiful in their conduct towards their parents, but these latter are also implicitly bidden to perform all the obligations which nature imposes on them towards their offspring, inasmuch as rights imply corresponding obligations. The mutual obligations of parent and child may be extended to all who hold an analogous position towards each other, and so under this heading theologians commonly treat of the mutual obligations of other relations, and of superiors and subjects, both ecclesiastical and civil.

CHAPTER I

ON THE DUTIES OF CHILDREN TOWARDS PARENTS

1. CHILDREN owe their existence to their parents, and for many years, until they come to maturity, they stand in need of their constant care and direction. It is but right, therefore, that children should love, reverence, and obey the authors of their being and their natural guardians. This is due to parents from their children on account of the special relationship in which they stand towards them, and so, as St Thomas teaches,[2] there must be a special virtue which regulates the mutual obligations of parent and child. This virtue is called piety in Catholic theology, and it regulates not only the mutual offices of parents and children towards each other, but our duty to other near relatives, and to our country and fellow-countrymen. It is a virtue similar to charity, but it binds more strictly, so that while charity prescribes a general love

[1] Exod. xx 12. [2] *Summa*, 2-2, q. 101, a. 3.

for all mankind, piety obliges us to a special love for those who are near to us, and for the country in which we were born.[1]

If, then, hatred or want of love for our fellow-men is of itself a grave sin, as we saw above, it will be still easier to commit a grave sin by want of proper affection for our parents. To show dislike of them or contempt for them, or to show that we are ashamed of them, will be a grave sin if our unfilial conduct is likely to cause them serious grief. In the same way, serious want of reverence and respect shown in word or action is grievously sinful. To strike a parent, or even to threaten to do so, will usually be mortally sinful.

By the duty of obedience children are bound to obey their parents in all that belongs to their bringing up and to domestic discipline. Sins of disobedience will be grievous if the matter is sufficiently important and the command is given with the serious intention of imposing a strict obligation.

Children are only bound to support their parents when they cannot support themselves, for whatever property a child may have or may acquire belongs exclusively to him. Among the working classes it is usual for elder brothers or sisters who have begun to work to throw their earnings into the common stock for the support of the family until they leave home and get an establishment of their own. This is quite as it should be, for the money which they earn is scarcely sufficient to pay for their own keep; or if it does more, there are little brothers and sisters or aged parents who are dependent on them, and whom they are bound to help to support.

2. The other obligations of children towards their parents are permanent and last as long as life, but that of obedience ceases with their emancipation. In England children are emancipated from the control of their parents when they become twenty-one years of age, when they marry, or when they enter into religion; for as soon as they have attained the age of puberty they are independent of their parents in what concerns the salvation of their souls and the choice of a state of life.

A minor may also enlist as a soldier without his parents' consent according to the English law.

Moreover, when a child has attained years of discretion, which he is considered to do at sixteen, it would seem that he may lawfully depart from home and provide for himself, if it be for his advantage. This, of course, supposes that the

[1] St Thomas, *Summa*, 2-2, q. 101, a. 1.

necessities of his parents or of his brothers and sisters do not require that he should remain at home. If a youth has acted in this way, and it appears to be for his benefit, English courts will not compel him to return home, and it was the common teaching of the classical moralists that in acting thus a youth would do nothing wrong.[1]

[1] Laymann, lib. 3, tract. 4, c. 8, n. 13.

CHAPTER II

THE DUTIES OF PARENTS TO CHILDREN

1. NATURE herself teaches parents their duties towards the offspring that they have brought into the world, and which stands in need of their loving care for many years before it arrives at maturity, so as to be able to lead an independent life.

Parents, then, are bound first and foremost to love their children with that special affection which belongs to the virtue of piety. They will commit grievous sin if they are indifferent to their children's welfare, if they deliberately curse them, if they show great and foolish preference for one child over others to the serious discontent of the latter.

They are bound to support their children until these can support themselves. Even before the child's birth, the mother must take care not to risk its life or natural development. After birth she is bound at least under venial sin to nourish it with her own milk, unless some good reason excuse her. Then there is the obligation of providing sufficiently for the child's maintenance, according to its position in life, by a prudent administration of the family property, or by earning money and saving what is necessary for the purpose. Grave sin is committed by a father who will not work, or who squanders his wages in drink or gambling, so that wife and children are deprived of proper support. Parents are bound to instruct their children in all that is required to enable them to lead a good Christian life; they must warn them of dangers into which their inexperience would lead them, and correct them when they do wrong. Above all, they must be careful to give them good example by leading a good Catholic life themselves, and by never being a source of scandal to their children in word or deed. They must watch to see with what companions their children associate, what they read, and what places they frequent.

The Elementary Education Act, 1876, declared it to be the duty of the parent of every child between the ages of five and fourteen years to cause it to receive efficient elementary in-

struction in reading, writing, and arithmetic; and penalties were imposed on parents who neglected this duty. As such an education can in most cases only be given in a school, it becomes a practical moral question of great importance as to what sort of school Catholic parents should select. The education of their children belongs primarily by the law of nature to the parents, and if they entrust a portion of their task to others they are bound to select such as can and will educate them according to Catholic principles. The Church, too, has received a divine commission to teach, and those who by baptism have become subject to her authority are obliged to be guided by her directions in this all-important matter. The Church condemns all non-Catholic schools, whether they be heretical and schismatical or secularist, and she declares that as a general rule no Catholic parent can send his young children to such schools for educational purposes without exposing their faith and morals to serious risk, and therefore committing a grave sin. A Catholic child, if educated away from home, should be placed in a Catholic school, under Catholic masters or mistresses. Sad experience in many different countries has shown how necessary this is for the preservation of the Catholic faith. If, however, there is no suitable Catholic school to which children can be sent, they may be sent to a non-Catholic school provided that the proximate danger can be made remote by using the proper means, and provided that the parents see to the religious instruction of their children. In many countries, as in England, the Bishops have reserved to themselves the decision as to whether in any particular case these conditions are fulfilled. A priest, therefore, should not take it upon himself to deny the sacraments to parents who send their children to a non-Catholic school; the case should be sent to the Bishop (*cf.* Can. 1113, 1374).

2. What has just been said applies specially to primary and secondary schools, for the question about non-Catholic universities is somewhat different. The Church would indeed wish that all who desire it might be able to obtain a higher education in a Catholic university. As this, however, is impossible in England, the Holy See has permitted Catholic parents to send their sons to Oxford or Cambridge on account of the grave necessity, and because when a young man has already received a sound secondary education among Catholic surroundings, if there is any character in him, he can be trusted to hold his own. Suitable safeguards, however, are

prescribed for the young men who avail themselves of this permission, among which is the obligation of attending Catholic lectures which are provided by the Bishops.

3. In order that parents may fulfil their obligations towards their children, the law of nature itself confers on them the requisite authority and the right to look after their children until these can provide for themselves. It would, then, be against natural justice if children were removed from their parents' control or if there were any interference with the parental authority as long as it is rightly exercised.[1] Although parental authority is derived from the law of nature, yet its precise extent and its limits are not defined by natural law; this is left to positive law, ecclesiastical and civil.

Parental authority extends to the person and to the property of a child.

i. (*a*) The right to the custody of the person of a child belongs to the father during his life, and after his death to the mother. Until emancipation at the age of twenty-one or until marriage a father can enforce his right by writ of *habeas corpus*.

An action also lies for loss of services against anyone who entices a minor away from the custody of his parents. Moreover, abduction of a girl under sixteen or under eighteen for immoral purposes is rigorously punished by English criminal law.

However, if a child who has reached years of discretion chooses to depart from home, our courts will not compel him to return, if the departure seems to be for his benefit.

(*b*) A parent or one who is *in loco parentis* may moderately chastise a minor who has been guilty of fault.

(*c*) The consent of the parent is required for the lawfulness of a minor's marriage.

ii. The parent as such has no rights over the property of his child according to English law. If, however, no other guardian has been lawfully appointed, the father will be regarded as the guardian of his child, and he will be compelled to administer its property for its benefit, and he can be compelled to render an account of his administration. Gifts which have been freely made by children to their parents are considered valid by our law, but there is a presumption against their being free gifts, unless this is proved.

[1] St Thomas, *Summa*, 1-2, q. 10, a. 12.

4. The duties of parents extend to illegitimate as well as to legitimate children. The duty of caring for an illegitimate child falls primarily on the mother, who, before a year has elapsed from its birth, may obtain from the magistrates a maintenance order against the reputed father, providing for the child's support and education at his expense.

A husband is bound by our law to support the children of his wife by a former husband as well as his own.

CHAPTER III

THE DUTIES OF RELATIVES AND GUARDIANS

1. WHAT has been said concerning the mutual obligations of parent and child applies proportionately to those of other near relations. These are also bound to love each other, not only out of charity, but out of piety, and they are under a grave obligation of rendering each other assistance not only in extreme but also in grave necessity. English law only enforces on relatives the obligation of maintaining a poor relation who is unable to support himself when he would otherwise be chargeable to the parish where he happens to be. Those who are so compellable are the wife and husband, the father and grandfather, the mother and grandmother or the children of the pauper. The law of charity and piety obliges more frequently and extends further.

2. Guardians are sometimes appointed according to law to take care of the person and property of minors.

Parents are legally the guardians by nature and nurture of the persons of their children until these reach the age of twenty-one, as we saw above.

Of the many kinds of guardians recognized by English law the following are still of practical importance: Statutory guardians, guardians appointed by the high court and guardians appointed for special purposes.

(*a*) Statutory guardians. By a statute of Charles II a father may appoint by deed or by will a guardian or guardians to have the custody of his infant child, and to manage its property until it reach the age of twenty-one. The Guardianship of Infants Act, 1886, made the mother on the death of the father the guardian of her infant children, either alone if no guardian was appointed by him, or jointly with the guardian or guardians appointed by the father. The mother can also by deed or will appoint one or more guardians to act after her death and that of the father. She may also appoint a guardian to act provisionally after her death jointly with the father.

(*b*) Guardians appointed by the High Court. An infant may be made a ward of court by settling a sum of money on it and bringing a suit for its administration. This may be done

even though the father be still alive, or a testamentary guardian has been appointed. Where the court is satisfied that it would be for the good of the ward, it may remove a guardian from his office and appoint another in his place, even though the infant be not a ward of court.

(*c*) Guardians for special purposes are sometimes appointed to consent to an infant's marriage, or for some other object under different statutes.

A guardian has a right to the custody of the person of his ward, and in general he exercises the rights, and is under the obligations of a father towards his ward. He administers the ward's property, and must render an account of his administration.

No one may marry a ward of court or remove it out of the jurisdiction without the court's permission.

The wishes of the father, as a general rule, according to English law, must be followed with regard to the religion in which a ward is educated by his guardian.

CHAPTER IV

THE OBLIGATIONS OF HUSBAND AND WIFE

BESIDES the obligations which are treated of under Marriage, and the rights and obligations arising out of property belonging to married people, which are discussed under the Seventh Commandment, there are certain obligations arising from marriage inasmuch as it places the husband in a position of authority and the wife in one of subjection. A word must here be said concerning their mutual obligations in this respect.

The wife becomes by marriage subject to her husband, and owes him love, reverence, and obedience, as to a superior. "Let women be subject to their husbands as to the Lord," says St Paul. "Because the husband is the head of the wife: as Christ is the head of the Church. . . . Therefore as the Church is subject to Christ, so also let wives be to their husbands in all things."[1]

However, a wife is not the slave or servant of her husband, but rather his companion, and so, though subject and bound to obey in all that relates to family life and conduct, yet she should be treated with love, consideration, and deference, and consulted in what concerns the family affairs.

The wife will commit grave sin if she shows great contempt for her husband, habitually neglects his commands, and arrogates his authority to herself without just cause.

The husband is bound to support his wife and family according to English law, who therefore have a claim in justice upon him as well as in piety. The husband sins grievously by treating his wife with habitual harshness and neglect, and by not providing for her necessities and those of her children. In this latter case the wife would not be guilty of sin if she took from her husband without his knowledge what was necessary for the decent support of the family.

[1] Eph. v 22-24.

CHAPTER V

THE DUTIES OF MASTERS AND SERVANTS

1. SERVANT is here understood in a wide sense so as to comprise both domestic servants and workmen who work for a master. The relation in modern times arises out of a contract freely entered into by the parties, and it is less intimate than that which in ancient times subsisted between the lord and the slave or serf. In spite of this, however, the nexus of cash payment is not the only bond between master and servant. By the very fact that one enters into the service of another, the latter becomes his superior, assumes the duty of caring for him, and in fitting proportion he acquires a claim to those marks of honour and reverence which are due to all who exercise authority over us.[1]

2. Servants, then, owe to their masters reverence, fidelity, and obedience.

(*a*) They are bound to show their masters due honour and respect, and grave sin may be committed by displaying open contempt for them, ridiculing them, and making known their secret defects. "Whosoever are servants under the yoke, let them count their masters worthy of all honour."[2]

(*b*) They must faithfully discharge the duties imposed on them by the nature of their charge. If they waste the time which belongs to their master, wilfully neglect their duties, damage or destroy the property of their master by not taking ordinary care of it, they sin against justice and are bound to restitution. If special charge of what belongs to the master is committed to a servant, he will be obliged to guard it against damage or loss caused by others, and he will sin against justice and be bound to make restitution if he fail to do so. Where no such special charge has been laid on a servant, he will only be bound in charity, not in justice, to protect the property of his master.

(*c*) A workman who does not live in his master's house will be bound to obey his master's commands in all that relates to the work that he undertook to do.

A domestic servant is a member of the master's household,

[1] St Thomas, *Summa*, 2-2, q. 102, a. 1. [2] 1 Tim. vi 1.

and the obligation of obedience extends to what concerns domestic discipline, as well as to the special work which was expressly undertaken by the contract. "Servants," says St Paul, "be obedient to them that are your lords according to the flesh, with fear and trembling in the simplicity of your heart, as to Christ: not serving to the eye, as it were pleasing men, but as the servants of Christ, doing the will of God from the heart, with a good will serving, as to the Lord, and not to men."[1] Still one who contracted to be a cook would not be bound to obey if ordered to do housemaid's work; neither explicitly nor implicitly was such an obligation undertaken when the contract was entered into.

These duties of a servant toward his master are touched upon by Leo XIII in his encyclical letter on the condition of the working classes, May 15, 1891. "Thus religion teaches the labouring man and the artisan to carry out honestly and fairly all equitable agreements freely entered into; never to injure the property, nor to outrage the person, of an employer; never to resort to violence in defending their own cause, nor to engage in riot and disorder; and to have nothing to do with men of evil principles, who work upon the people with artful promises, and excite foolish hopes which usually end in useless regrets, followed by insolvency."

3. The duties are not all on one side and the rights on the other in the relation of master and servant. Each has his rights and each his duties, and their good and the good of the community largely depends on both sides faithfully and loyally fulfilling their mutual obligations.

(*a*) A master must treat his servant not as a mere instrument of production, but as a fellow-Christian: "Religion teaches the wealthy owner and the employer that their work-people are not to be accounted their bondsmen; that in every man they must respect his dignity and worth as a man and as a Christian; that labour is not a thing to be ashamed of if we lend ear to right reason and to Christian philosophy, but is an honourable calling, enabling a man to sustain his life in a way upright and creditable; and that it is shameful and inhuman to treat men like chattels to make money by, or to look upon them merely as so much muscle or physical power."[2]

(*b*) "Again, therefore, the Church teaches that, as religion and things spiritual and mental are among the working man's main concerns, the employer is bound to see that the worker has time for his religious duties; that he be not exposed to

[1] Eph. vi 5-7. [2] Leo XIII, *l.c.*

corrupting influences and dangerous occasions, and that he be not led away to neglect his home and family or to squander his earnings."[1] The general obligation of fraternal correction will more frequently impose a duty on the master of admonishing and correcting a domestic servant than an ordinary workman of his.

(*c*) " Furthermore, the employer must never tax his workpeople beyond their strength or employ them in work unsuited to their age or sex."[2]

According to English common law, the contract between employer and employed involves on the part of the former the duty of taking reasonable care to provide appliances and to maintain them in a proper condition, and so to carry on his operations as not to subject those employed by him to unnecessary risk. This common law liability has been further increased and defined by the Employers' Liability Acts and Workmen's Compensation Acts, which, however, will as a rule only affect the conscience after the sentence of a competent authority, except in so far as there was grave culpable negligence on the part of the employer.

(*d*) The employer's " great and principal duty is to give everyone a fair wage. Doubtless before deciding whether wages are adequate, many things have to be considered; but wealthy owners and all masters of labour should be mindful of this, that to exercise pressure upon the indigent and the destitute for the sake of gain, and to gather one's profit out of the need of another, are condemned by all laws, human and divine. To defraud anyone of wages that are his due is a crime which cries to the avenging anger of heaven. *Behold, the hire of the labourers . . . which by fraud hath been kept back by you, crieth aloud; and the cry of them hath entered into the ears of the Lord of Sabaoth.*[3]

" Lastly, the rich must religiously refrain from cutting down the workmen's earnings, whether by force, by fraud, or by usurious dealing; and with all the greater reason because the labouring man is, as a rule, weak and unprotected, and because his slender means should in proportion to their scantiness be accounted sacred. Were these precepts carefully obeyed and followed out, would they not be sufficient of themselves to keep under all strife and all its causes ?"[4]

Sums must not be deducted from a servant's wages on account of temporary illness, though by English law a master

[1] Leo XIII, *l.c.*
[2] *ibid.*
[3] Jas. v 4; Can. 1524.
[4] Leo XIII, *l.c.*

is not bound to provide medical aid or medicines for a sick servant, though he is for an apprentice. If he sends for medical assistance for a servant whilst under his roof, he is liable.

In the same encyclical of Leo XIII a general rule is laid down for deciding what a fair wage is: "Let it, then, be taken for granted that workman and employer should, as a rule, make free agreements, and in particular should agree freely as to the wages; nevertheless, there underlies a dictate of nature more imperious and more ancient than any bargain between man and man—namely, that the remuneration must be sufficient to support the wage-earner in reasonable and frugal comfort. If through necessity or fear of a worse evil, the workman accept harder conditions, because an employer or contractor will afford him no better, he is made the victim of force and injustice."

The workman, then, has a right to a living wage, and the employer who grows rich by sweating his work-people commits a sin against justice and is bound to make restitution of his ill-gotten wealth. If, however, the employer gives as good wages as he can afford, or as good as the labour is worth, he will be excused from any sin against justice; occasionally in bad times he may be bound out of charity to give employment without profit to himself or even at a personal loss.

4. It is sometimes the duty of the State to interpose its authority in order to settle labour questions. As Leo XIII says: "If by a strike, or other combination of workmen, there should be imminent danger of disturbance to the public peace; or if circumstances were such that among the labouring population the ties of family life were relaxed; if religion were found to suffer through the operatives not having time and opportunity afforded them to practise its duties; if in workshops and factories there were dangers to morals through the mixing of the sexes or from other harmful occasions of evil; or if employers laid burdens upon their workmen which were unjust, or degraded them with conditions repugnant to their dignity as human beings; finally, if health were endangered by excessive labour or by work unsuited to sex or age—in such cases there can be no question but that, within certain limits, it would be right to invoke the aid and authority of the law." A little further on Pope Leo again refers to strikes: "When work-people have recourse to a strike, it is frequently because the hours of labour are too long, or the work too hard, or because they consider their wages insufficient. The grave

inconvenience of this not uncommon occurrence should be obviated by public remedial measures, for such paralyzing of labour not only affects the masters and their work-people alike, but is extremely injurious to trade and to the general interests of the public; moreover, on such occasions, violence and disorder are generally not far distant, and thus it frequently happens that the public peace is imperilled. The laws should forestall and prevent such troubles from arising; they should lend their influence and authority to the removal in good time of the causes which lead to conflicts between employers and employed."[1]

It is unlawful for workmen to strike when by so doing they violate a just contract which they have freely entered into, or when they cannot hope to gain anything substantial, so that there is no adequate compensation for the sufferings, losses, and risks which generally accompany a strike. It is wrong to use violence and threats to compel other workmen to strike against their will, or to prevent them accepting work if they desire to do so.

If, however, other means of obtaining redress or of securing their rights have failed, it is not wrong for workmen to strike in order to obtain a diminution of excessive hours of toil, or a just wage, or other just, reasonable, and adequate advantage.

5. The contract of hiring may be terminated by mutual consent of the parties concerned, or for just cause by one of the parties, provided that the laws and customs which regulate the matter be duly observed. Generally speaking, a month's notice, or a month's wages, is required by English law to determine a general hiring of a domestic servant. If, however, the servant is incompetent to do what he undertook, is habitually disobedient, or is guilty of immorality, or unlawfully absents himself from his work, he may be dismissed without notice.

[1] Leo XIII, *l.c.*

CHAPTER VI

THE DUTIES OF MASTERS AND SCHOLARS

1. SCHOOLMASTERS and schoolmistresses are put in the place of the parents to educate children in letters and good conduct. They therefore to a certain extent share the obligations and the rights of parents. Furthermore, they are bound in justice by contract to fulfil the special duties which are annexed to their office of training the children committed to their charge.

2. Pupils are bound to love, reverence, and obey their masters and mistresses in all things that pertain to their education in letters and morals. However, in estimating the gravity of sins of disobedience toward masters and mistresses, we must consider not only whether the matter be grave and there be a serious intention of imposing an obligation, as in other cases of disobedience, but also whether the authority of the master or mistress enables them to give a precept which binds under pain of grave sin. Such ample authority is usually not committed to inferior masters and mistresses.

CHAPTER VII

THE DUTIES OF ECCLESIASTICAL AND CIVIL RULERS AND THEIR SUBJECTS

1. ALL those to whom the care of souls is committed in the Church of God are bound by divine precept and by the very nature of their office to fulfil the duties of their charge.[1] If they fail in their duty, they sin not only against charity and obedience, but also against justice; for everyone who voluntarily undertakes an office implicitly thereby undertakes to discharge the duties annexed to it. In general, therefore, ecclesiastical superiors are bound to love, watch over, and instruct by word and by example those committed to their charge. The special obligations of each one depend on the office which he holds, and are treated of elsewhere.

2. Subjects also owe to their ecclesiastical superiors love, reverence, obedience in all that belongs to their office, and temporal support. This is obvious from what has already been said, and it is inculcated in several places of Holy Writ.[2]

3. It has been the constant teaching of the Catholic Church that all public and legitimate authority is of divine right, in the sense that God is the Author of man's nature by which he is a social animal, formed to live in society, which necessarily implies a distinction of rulers and ruled. The rulers may, indeed, be designated in various ways, their power may be more or less absolute; this power may be in the hands of one or of many, but it is derived from God, the Author of man's nature and of human society. This is the teaching of St. Paul: " Let every soul be subject to higher powers; for there is no power but from God; and those that are, are ordained of God. Therefore he that resisteth the power, resisteth the ordinance of God. And they that resist, purchase to themselves damnation."[3] As Leo XIII says in his encyclical letter, *Diuturnum*, June 29, 1881, this doctrine is taught in many passages of Holy Writ, and has been constantly inculcated by the Catholic Church.

[1] Trent, sess. 23, c. 1, de Ref.
[2] 1 Tim. v 17; Heb. xiii 17.
[3] Rom. xiii 1-2.

In English-speaking countries the people have a large share in the election of their rulers, and such an important duty should be faithfully and religiously fulfilled. There may easily be a moral obligation to vote at elections in order to prevent the election of one who would do grave public harm if elected, or in order to secure the election of one whose election would be a great public benefit. If the only choice lies between candidates who are equally good or equally bad, there will be no moral obligation to vote.

Those who hold any civil office are bound to perform its duties faithfully, not only out of charity, but out of justice.

4. For Catholics it is a matter of religious obligation to love, reverence, and obey those who wield civil power. As Leo XIII teaches: "We are bound to love dearly the country whence we have received the means of enjoyment this mortal life affords, but we have a much more urgent obligation to love with ardent love the Church to which we owe the life of the soul, a life that will endure for ever. . . . Moreover, if we would judge aright, the supernatural love for the Church and the natural love of our own country proceed from the same eternal principle, since God himself is their Author and originating Cause. . . . Law is of its very essence a mandate of right reason, proclaimed by a properly constituted authority, for the common good. But true and legitimate authority is void of sanction, unless it proceed from God, the supreme Ruler and Lord of all. The Almighty alone can commit power to a man over his fellow-men; nor may that be accounted as right reason which is in disaccord with truth and with divine reason; nor that held to be true good which is repugnant to the supreme and unchangeable good, or that wrests aside and draws away the wills of men from the charity of God. Hallowed, therefore, in the minds of Christians is the very idea of public authority, in which they recognize some likeness and symbol, as it were, of the divine Majesty, even when it is exercised by one unworthy. A just and due reverence to the laws abides in them, not from force and threats, but from a consciousness of duty; for God hath not given us the spirit of fear."[1]

[1] Leo XIII, Encyclical Letter, January 10, 1890.

PART V

THE FIFTH COMMANDMENT

THE Fifth Commandment is, " Thou shalt not kill."[1]

The crime of homicide is primarily forbidden by this precept, but inasmuch as quarrelling, fighting, wounding, lead up to homicide, these and similar acts are secondarily forbidden. Implicitly, the precept prescribes the preservation of life, since death will follow if care be not taken to preserve life.

CHAPTER I

ON SUICIDE

1. SUICIDE, or the killing of one's self, when one's own death is the direct and immediate object of the will, is forbidden by the Fifth Commandment and is grievously sinful. It is the same when death is not the direct object of the will, if some act is done of which the only immediate effect is the destruction of one's own life; for in that case by willing the action I implicitly will the effect. And so if, out of bravado, I jumped from the top of the tower of Westminster Cathedral into the street below, I should be guilty of the grave sin of suicide, even though that was not my direct object.

The reason why suicide is unlawful is because we have not the free disposal of our own lives. God is the author of life and death, and he has reserved the ownership of human life to himself. We cannot leave the post where he has stationed us without his authority. Moreover, a man belongs to his country, and so suicide is a crime against the commonwealth, and as such is punished. There is a controversy among divines as to whether it would be lawful for a malefactor who had been condemned to death and entrusted by public authority with the execution of the sentence against himself to take his own life. Many hold that it would be lawful, for there seems no conclusive reason why the State might not appoint a man to be his own executioner.

[1] Exod. xx 13.

2. It is not unlawful to do something which will cause one's own death provided that the action has some other immediate and good effect of great importance, which counterbalances the loss of human life, and this is not intended. This is merely an application of the principle of a double effect which was explained in the Book on Human Acts. The captain of a man-of-war, for example, which in time of war is in danger of falling into the hands of the enemy, might blow up the ship in order to prevent so great a disaster befalling his country, although the act would cause his own death and that of others in the ship. He does not intend the destruction of human life; the immediate effect of his action is to prevent the ship falling into the enemy's hands. The public advantage counterbalances the loss.

3. Similarly, for good reason I may undertake dangerous work, go to unhealthy climates, or lead a kind of life which will lessen the number of years that I shall live. Somebody must do such things; they are useful to the community or to myself, and I do not intend the shortening of my life. It would be wrong to expose my life to probable danger merely for the sake of getting money or notoriety; such reasons do not justify us in seriously risking human life.

4. As we have not the ownership of life, so neither are we the owners of our limbs so as to be able to dispose of them at will. A man is not justified in mutilating himself in order to avoid military conscription, or to excite commiseration, or to gain money. The amputation of a limb is permissible when such an operation is necessary in order to preserve life; for we may sacrifice a part for the safety of the whole.

5. We are obliged to take ordinary means to preserve our lives, for to do otherwise would be virtually to commit suicide. There is no obligation to take extraordinary, unusual, or very painful or expensive means to preserve our lives. And so one in feeble health, who will probably die if he spends the winter in England, is not bound to expatriate himself and go and live in a milder climate. Nor am I bound to undergo a painful and costly operation in order to save my life; I may if I like choose rather to die, unless my life is of great importance for the common good, for then the public good must be considered first. Except in such a case as this, a superior could not oblige a subject to undergo a very painful operation or to submit to the amputation of a leg; obedience to human authority does not seem to extend to such matters as these.

CHAPTER II

ON CAPITAL PUNISHMENT

1. THE right of the State to punish criminals with the infliction of death is either expressly conceded or clearly supposed in Holy Scripture.[1] It is sufficiently evident, too, from natural reason, for the State should be endowed with all those powers which are necessary to secure its end, the temporal happiness of its citizens. But it would not be possible to keep human passion within bounds and ensure the safety of the lives and property of its peaceful citizens, unless the State had the power of inflicting death on those who have been guilty of great crimes. The practice of the most civilized states confirms this view, and experience seems to demonstrate its truth. If the time should ever come when the infliction of less severe penalties will suffice to punish crime and safeguard life and property, then capital punishment should be abolished, but that time does not seem to be at hand yet.

If the State has the right to deprive a criminal of life, *a fortiori* it may inflict lesser punishments, such as flogging and imprisonment. Indeed, certain persons who have authority over others, such as fathers of a family, captains of vessels at sea, and schoolmasters, have the power to inflict smaller punishments in moderation on delinquents under their authority. Before capital punishment can be inflicted the essentials of a judicial process by which a grave crime is brought home to the delinquent must be gone through. For the right of capital punishment belongs to the State as such, to the public authority, and so before punishment is inflicted it should be proved that the crime was committed by the person charged, and judicial sentence according to law should be passed upon him. In certain cases when the ordinary process of law cannot be followed, and there is danger in delay, the public authority might empower anyone to kill a notorious criminal, but in settled times and ordinarily this should not be done. It would be a very dangerous remedy for crime if the State empowered its citizens to punish delinquents without previous trial and conviction. The innocent

[1] Rom. xiii 4.

sometimes suffer in spite of the elaborate precautions and delay of modern criminal trials. If these were abolished and every citizen became a judge and executioner for crime, the remedy would be far worse than the disease. The Roman law and that of some more modern states permitted a father or husband to kill a daughter or wife found in adultery. Such laws were not approved by the Church, and they could not in conscience justify one who took advantage of the immunity they gave to commit so cruel a murder.

2. To take means to safeguard the public welfare, and especially to inflict the punishment of death on criminals, belongs to the public authority and not to private citizens, and so these cannot lawfully arrogate to themselves the power of inflicting capital punishment. Lynch-law, then, is against sound principles of morality. In places where no effective government exists, the people should constitute a government to safeguard the common interests and to punish crime; this duty must not be left in private hands.

I quote the following from the *Encyclopedia of the Laws of England*, *s.v.* Escape: "Considerable controversy has from time to time arisen on the question whether the officers of the law or persons entitled to apprehend or detain a person accused or suspected of crime are entitled to kill him on pursuit if they cannot otherwise stop him, or to kill him to prevent his escape after arrest. It seems to be agreed that the custodian is not entitled to kill to prevent escape from custody on a civil charge, nor from custody on a charge of misdemeanour. Where the escaped prisoner is accused of a capital offence, the custodian appears to be entitled to kill him if he cannot otherwise retake him; but it is not clear whether the mitigation of the severity of the law as to punishments for felony during this century (the nineteenth) can be regarded as reducing the right of the officers of the law to kill a fugitive from justice. With respect to convicts under sentence of penal servitude escaping from prison, questions arose in 1896 owing to the shooting of an escaping convict on Dartmoor which cannot be regarded as settled, and which have led to a revision of the Convict Prison Rules."

CHAPTER III

ON JUSTIFIABLE HOMICIDE

1. In defence of my own life from unjust attack I may use whatever violence is necessary and even go to the length of killing the aggressor, if I cannot otherwise save my life. This right of self-defence all laws, human and divine, concede, as Innocent III declared. Nature herself teaches us that an act which is necessary for self-defence is lawful, and even if it lead to the taking of the life of the unjust aggressor it does not cease to be lawful. A higher value must be set on the life of the innocent than on that of the guilty, especially when the guilty one is the cause of his life being put in jeopardy. No one is justified in using greater violence than is necessary for the purpose of self-defence, so that if by striking or wounding an assailant of my life I can effectually defend myself, I am not justified in killing him. On the same principle no private person can take vengeance for violence which has already been done, by offering violence in return; vindictive justice is reserved for public authority, at any rate in more serious matters. Nor may one whose life is threatened anticipate the attack; defence is only lawful when the attack is practically being made or is at any rate imminent. Unless the attack is practically imminent it is always possible to resort to other means than homicide for the defence of one's own life; one may invoke the protection of the law or at least fly the intending assailant.

2. Under the same limitations it is lawful to kill the assailant not only of one's life, but also of limb, of chastity, and of property. For all these goods belonging to an innocent person may be lawfully defended by him even at the cost of the life of the unjust assailant of them, who is responsible for his own death by his unwarrantable action. When it is said that we may kill an unjust assailant in defence of property, it is supposed that the property which is threatened is of considerable amount. Innocent XI condemned a proposition which asserted that, "As a rule I may kill a thief for the preservation of a gold piece." This proposition is false, for a rich man would not be justified in shooting a thief whom he

saw walking off with one of his silver spoons. If, however, the thief threatens property of considerable value—say, twenty pounds or so—and the only way of saving the money is by taking the life of the thief, this would be lawful. Moreover, when a highwayman demands my purse or my life, I am not bound to hand him my purse, even though it contain little money; I may always defend myself from such unjust attacks, even though it finally involves the death of the aggressor.

3. It is not lawful to kill another who attacks my honour with insulting words. The contrary used to be held by some theologians, but the doctrine was condemned by Alexander VII and Innocent XI. The reason of the difference between this case and the foregoing is that verbal insults are often not of very serious consequence; they are better and more effectively met by quiet contempt than by being taken seriously, and that would be a perilous doctrine which taught that a man might avenge an insult with the death of the offender. What constitutes an insult is often a very subjective question, and the results of the doctrine would be deplorable.

4. What one may lawfully do, that, as a rule, another may help him to do; and so I may kill or maim an unjust assailant not only of my own life, limb, chastity, or property, but when any innocent person is similarly threatened I may also do the same in his defence. Although I may lawfully do this, yet there is seldom an obligation of doing it, for the obligation would only arise from charity, and as we saw above, this virtue does not usually bind with such serious inconvenience as would always be involved in taking life in defence of another. Those who have charge of the public peace and security are more strictly bound to perform their duty of protecting life and property even at the sacrifice of the lives of wrongdoers.

CHAPTER IV

ON KILLING THE INNOCENT

1. It is never lawful directly to kill the innocent, or, in other words, it is never lawful to kill the innocent when the death is intended in itself, or when it is inflicted as a means to the attaining of some other object. Such an act is expressly forbidden by God: "The innocent and just person thou shalt not put to death."[1] Reason, too, teaches us the same truth; for if ever it were lawful directly to kill the innocent, it would be so when such a death would be of great advantage to the commonwealth. But even to save the State an innocent man's life must not be taken directly, for the State exists that good men may lead honourable and peaceful lives; the State is for the good citizens, not the good citizens for the State. Not even the good of the State, then, makes it right to take an innocent man's life, and if that does not justify the act, nothing does.

2. The death of the innocent may be permitted, not intended, when it follows from some action lawful in itself which also produces an equally immediate and good effect, and when this counterbalances the evil effect. This, again, is but the application of the principle of a double effect, and it is evident from what has been said before. The general of an army who orders the bombardment of a beleaguered town knows that his order cannot be executed without killing perhaps many innocent non-combatants, yet the action is not unlawful.

3. Casual homicide which was not intended in itself, but which was the consequence of doing some dangerous action, as furious driving in a frequented street, is imputable to the agent if he adverted to the probable danger of killing someone. If such probable danger did not exist, or was not adverted to, casual homicide will not be imputable in conscience, although if the action be forbidden by law, even on other grounds than the chance of its causing another's death, and someone is killed by it, English law punishes it as manslaughter.

4. It is usual to treat here of abortion, and of certain surgical operations concerned with child-bearing. Abortion is the

[1] Exod. xxiii 7.

premature ejection of the living fœtus. The human fœtus reaches maturity about nine months after conception, but it is capable of living even if born a considerable time before maturity. A child may live when born at seven months or even somewhat earlier, especially if artificial means are taken for preserving its life. When the fœtus is ejected at such a time that in the judgement of a skilled medical man it will probably live, this is called acceleration of birth rather than abortion in the strict sense. We are here concerned with the lawfulness of procuring abortion and of performing such operations as craniotomy and embryotomy, which destroy the life of the fœtus. There is only question of the living, not of the dead, fœtus, as is obvious.

5. Inasmuch as it is never lawful directly to kill the innocent, it is never lawful directly to procure abortion at a time when there is no probability that the fœtus can live outside the mother's womb. This is clear, for the fœtus is a human being, with a human soul, which, as is commonly held by theologians, is infused into it by God at the moment of conception; it has, then, as much right to live as anyone else, and it certainly is innocent of all personal crime. To deprive it directly of the medium in which alone it can live is to kill it directly, just as to deprive a man of air by plunging him under water is to kill him directly. The direct procuring of abortion, then, is never allowed, inasmuch as it is the direct killing of the innocent, and intrinsically wrong. In the same way, anticipated homicide and a grievous sin are committed whenever means of whatever sort are taken to prevent conception.

6. However, just as the indirect killing of the innocent is lawful for a just cause, as we have seen, so a pregnant woman who is suffering from disease or tumour, or any complication which threatens life, may lawfully adopt the necessary means to save herself, even if what is a remedy for her causes the death of the fœtus. In all these cases we have but the application of the principle of a double effect; the mother is not bound to sacrifice her life by abstaining from adopting the remedy indicated, especially as her own death would also involve the death of the child. Thus we may approve of the following solution by Dr. Capellman of the " case where the uterus with the fœtus is locked in the upper strait, as may happen through retroversion, sinking, and prolapsus of the pregnant womb. If all other known means of turning or replacing the uterus fail, I believe it to be allowable to induce abortion indirectly, by procuring the discharge of the waters, or by the perforation

of the fœtal membranes."[1] On the same principle P. Antonelli thinks that it is lawful to remove an ulcerated womb which is threatening the life of a pregnant mother though the operation cause the death of the fœtus, as also to remove an extra-uterine fœtus whose further growth would cause the certain death of the mother.[2]

All who unlawfully procure abortion incur the penalty of excommunication, the absolution of which is reserved to the Bishop by Canon 2350.

7. Craniotomy, or any other similar operation which has for its immediate and direct effect the destruction of the life of the fœtus, is a direct killing of the innocent, and is never allowed. If the child is already dead, there is of course no difficulty in permitting craniotomy or embryotomy, but if it is still alive it is not lawful to kill it, even if otherwise both child and mother were certain to die. Evil must not be done that good may come of it. The end does not justify the means. Some medical men consider the fœtus, until it is born, as a portion of the mother which may be destroyed to save her life. This view is not in keeping with Christian principles, according to which the child has a soul of its own, and has its own independent right to live.

Some theologians used to think that such operations were lawful if the mother's life could not otherwise be saved, because the child might be considered a materially unjust assailant of its mother's life, and so be lawfully killed; or because when there is a conflict of rights the stronger right should prevail. However, in no sense can it be allowed that the child is an unjust assailant of its mother's life; it is where nature placed it, through no fault of its own, and it has a right to be there and to be born. If either is an unjust assailant of the other's life, it is the mother, who voluntarily undertook the obligations of motherhood. In the same way, when the stronger of two conflicting rights prevails, this is due to the fault of the other party, and such fault is out of the question in this case. This doctrine is now theologically certain after the repeated declarations of the Holy See that no operation which tends directly to the destruction of the life of the fœtus is lawful.

When the child cannot be born in the natural way, and the life of both mother and child is in danger, Caesarian section or some similar operation may be, and should be, performed,

[1] *Pastoral Medicine*, p. 16.
[2] *Medicina pastoralis*, p. 220.

by which the lives of both may very probably be saved. The operation which takes its name from Dr. Porro, and which consists in removing the uterus together with the fœtus, requires some special reason to make it lawful, for such mutilation of the mother is only allowed when it is necessary in order to save life.

In all operations which involve danger to the life of the child, Catholic parents should be careful to have the living fœtus baptized, which may be done by the doctor or nurse while it is still in the womb. But according to Canon 746 this should not be done as long as there is any hope of the child being born alive.

CHAPTER V

ON DUELLING

1. A DUEL is defined to be a premeditated and prearranged combat between two persons with deadly weapons, and usually in the presence of at least two witnesses, called seconds, for the purpose of deciding a quarrel, avenging an insult, or clearing the honour of one of the combatants or of some third party whose cause he champions.

A duel, then, is a premeditated and prearranged single combat, for if two persons begin to quarrel and then come to blows, it is not a duel even if death be the result. Nor is it a duel if two enemies meet by accident and begin straightway to fight. A duel is a combat with deadly weapons, so that a fight with sticks or with the fists is not a duel. Although seconds are commonly present, yet their absence would not prevent a single combat from being a duel if the other conditions were verified. The duel is for the purpose of deciding a private quarrel, and for such a purpose it is unlawful even if it have the sanction of public authority, for there are other and lawful means of settling such matters. A single combat between champions of hostile nations entered into by public authority for the purpose of terminating the war, or giving courage to the army, would not be a duel, and might be permitted.

2. It is never lawful to fight a duel by private authority, for it obviously exposes the parties to grave risk of killing or wounding, or of being killed or wounded, and this is never lawful by private authority except under the conditions which justify killing in self-defence, and these are not verified in the duel.

The Council of Trent[1] very emphatically condemned duelling as a detestable practice and excommunicated the guilty parties, their seconds and abettors, as well as emperors, kings, and princes who permit it in their territories. This excommunication is renewed by Canon 2351, and the power of granting absolution if it has been incurred is reserved to the Pope. Benedict XIV, by a constitution dated November 10, 1752,

[1] Sess. 25, c. 19, de Ref.

condemned the following propositions as false, scandalous, and pernicious:

" (*a*) A military man who, unless he offer or accept a duel, would be considered cowardly, timid, worthless, and unfit for office in the army, and so would be deprived of his post by which he gains support for himself and his family, or would for ever lose all hope of promotion otherwise due to him, would incur neither fault nor penalty if he offered or accepted a duel.

" (*b*) Those who accept or challenge to a duel for the sake of defending honour or avoiding disgrace may be excused when they know for certain that the combat will not come off, inasmuch as it will be prevented by others.

" (*c*) A general or officer in the army who accepts a duel through serious fear of losing reputation or office does not incur the penalties inflicted by the Church on those who fight a duel."

The contradictory of these false propositions must be held by all who admit the authority of the Church.

3. Clement VIII, in a constitution dated September 1, 1592, declared that those incurred the penalties of duelling who fought under the stipulation that they would stop after a certain number of blows, or as soon as either was wounded or blood was drawn. Grave sin, then, would be committed by challenging or accepting a duel even under these conditions, at least on account of the scandal and disobedience to authority, if not on account of the danger.

By English and American law duelling is illegal, and if death be the result, it is regarded as murder, and the seconds are liable to punishment as accessories.

CHAPTER VI

ON WAR

1. WAR, or an armed struggle between sovereign states, is defensive when it is undertaken to resist attack; otherwise it is offensive when undertaken to avenge an injury, or in vindication of a right.

2. When a quarrel has arisen between two sovereign states, if it is clear that one of the parties is in the wrong, it is bound to make reparation to the offended party. In national quarrels, however, this is seldom the case; as a rule, international disputes are matters of great complexity, and it is very difficult to say on which side right and justice lie. In ordinary cases, then, defensive war is always lawful, for if individuals have the right of self-defence the same right must *a fortiori* be conceded to a sovereign state. Even offensive war is lawful, provided that certain conditions be fulfilled. This is the certain teaching of Catholic theology, although the Church constantly prays to be delivered from all wars and from the terrible evils to which they give rise. Although war is a great evil, yet it is sometimes a hard necessity if still greater evils are to be avoided. For there is no higher tribunal to which sovereign states can have recourse to settle their disputed rights, and nothing is left but the final arbitrament of the sword. In modern times arbitration courts have been established, and they have done useful work, but cases arise in which their aid cannot be invoked with effect.

3. The conditions on which war may be lawfully waged are three:

(*a*) The public authority of a sovereign state is requisite to declare war, for war, except in just defence, cannot be made on private authority, or by a less than sovereign state; for private persons and subject states can always have recourse to higher authority for the vindication of their rights.

(*b*) A just and weighty cause is necessary, for the cause should be such as to outweigh the grave evils and risks which always accompany war. Such causes, in the judgement of divines, are: the retaking of a conquered country or rebellious province, the avenging of a grave insult or injury offered to

the State, the freeing of the unjustly oppressed, the refusal of infidel states to allow the Gospel to be preached in their dominions. There is considerable difference of opinion as to whether certainty of the existence of a sufficient cause is required or not for the lawfulness of a war. Some divines hold that a probability of right is sufficient, for with such a probable right a private person may commence an action at law, and states should not be in a worse position than private persons in the prosecution of their claims. However, on account of the grave public evils connected with war, and because it is unlawful to deprive another of what he possesses on the ground that it is only probably mine, it would seem that at least a more probable right or even a moral certainty of right is required on the side of the state that begins the war.

(*c*) There must be an upright intention of advancing the cause of good or preventing evil. Mere delight in the excitement of war, or the desire of showing one's prowess or obtaining promotion, would not justify war.

When the end of the war has been sufficiently obtained the victorious party should be ready to make peace on proper guarantees being given.

4. Where conscription exists or soldiers have already enlisted before the outbreak of war, they are not bound to make inquiries about the origin of the war in order to satisfy their consciences of its justice; they may presume that their country is in the right unless it is evident that it is in the wrong, and in doubt they are bound to obey the commands of their lawful superiors. If the war is clearly unjust it only remains for the conscientious soldier to abstain from inflicting unjust damage on the enemy, otherwise he will be a co-operator in injustice. Volunteers who had not enlisted at the outbreak of war are bound to satisfy their consciences as to its lawfulness before they take any part in it, just as they are bound to form a morally certain conscience about the lawfulness of any action that they undertake, as we saw in the Book on Conscience.

5. In a just war all means that conduce to the end of gaining victory over the enemy are lawful, provided that they are not against the law of nature and international law or agreement. International agreements are only binding if they are faithfully adhered to by the adverse party. In modern war it is the practice to spare the persons and property of non-belligerents as far as possible. In naval warfare not only the enemy's ships of war may be attacked and taken, but his merchantmen, and any British vessel or vessel of an ally trading with or

acting in the service of the enemy at war with England, or any neutral vessel engaged in the same way or in the carriage of contraband, and blockade runners, may be captured and made lawful prize by duly commissioned British ships. Booty of war on land is restricted to arms, ammunition, and military provisions and stores. Private property on land is no longer liable to capture and confiscation, but requisitions and contributions of men for labour, money, victuals, etc., are still levied on the invaded territory by duly qualified officials of the invading army. Beyond these limits, or at least beyond what is permitted by lawful authority, it is not allowed to appropriate private property belonging to the enemy.

PART VI

THE SIXTH AND NINTH COMMANDMENTS

IT is usual to treat of these two Commandments together, for the Sixth, "Thou shalt not commit adultery,"[1] in expressly forbidding the chief sin, implicitly forbids all other external sins against the laws of marriage, and the Ninth, "Thou shalt not covet thy neighbour's house, neither shalt thou desire his wife,"[2] forbids internal sins of covetousness and lust. The general doctrine concerning internal sins was given in a former Book; the special doctrine about covetousness in so far as it is against justice is clear from what was said about avarice and what will be said later about justice; the doctrine about external sins of lust will be evident from what has to be said in this place.

CHAPTER I

THE NATURE OF IMPURITY

1. THE means devised by God for the preservation and increase of the human race is the union of the sexes. This union has for its primary object the procreation of children, who require for their proper education the long and assiduous care of both father and mother. Nature, then, as well as the law of God and of the Church, requires that children should only be begotten of parents joined in lawful and indissoluble wedlock. As nature has taken care that the individual should take the food and drink necessary for his personal support by giving him the spur of appetite for nourishment and pleasure in taking it, so the same great Mother has taken care of the race by joining venereal pleasure to the act of procreating children. This venereal pleasure is lawful when indulged in between married people and according to the laws of marriage. In all other cases it is unlawful, and is forbidden by the Sixth and Ninth Commandments.

Venereal pleasure must be distinguished from sensual and from venereo-sensual pleasure. Venereal pleasure has its seat

[1] Exod. xx 14. [2] Exod. xx 17.

in the genital organs, and is caused by their motions, the irregular motions of the flesh. Sensual pleasure is other than venereal, and rises from indulgence of the senses, from the contemplation of a beautiful picture, from listening to sweet music, from touching the glossy and soft coat of a cat. This sensual pleasure is morally harmless in itself, but there is a certain kind of pleasure which is sensual in its origin but which is connected with, and ordinarily causes, venereal pleasure. It arises from such acts as voluptuous kissing, and is called by divines venereo-sensual. On account of its connection and tendency, venereo-sensual pleasure is evil, and ordinarily is more or less sinful, as we shall see in what follows.

Sins of impurity are consummated or non-consummated. Peccata consummata procedunt usque ad perfectam voluptatem veneream, quae habetur per copulam vel per pollutionem. Sunt consummata juxta naturam si exinde generatio prolis sequi possit, aliter sunt consummata contra naturam. Non-consummata peccata sunt aspectus, tactus, colloquium impudicum, quae non pertingunt usque ad perfectam voluptatem veneream.

2. All sins of impurity of whatever kind or species are of themselves mortal. This doctrine is taught in such passages of Holy Scripture as the following: 1 Cor. vi 9-10; Gal. v 19; Matt. v 28. Moreover, as we saw above, those sins are grievous which cause great harm to society or to the individual; but there is scarcely any cause so prolific of public and private evil of all sorts as sins of impurity, so that we must conclude that they are grievous even by the light of reason. Furthermore, all sins of impurity, if voluntary in themselves and fully deliberate, are mortal; or in other words, it is grievously sinful directly to seek any even slight unlawful venereal pleasure, or to consent to it deliberately even when it has not been directly sought.

This doctrine is the approved teaching of theologians, and it has a rational basis, inasmuch as the tendency of men to these sins is so strong and their weakness so great, that slight indulgence in venereal pleasure almost necessarily leads to grave excesses, so that even in light matter there is the whole reason of the prohibition, and so all sins of impurity, if fully deliberate and voluntary in themselves, are mortal, and there are none that are venial merely on account of parvity of matter.

On the other hand, if venereal pleasure is not voluntary in itself but only in its cause, nor deliberately consented to when it arises, although it was foreseen that it would follow from

some other action, as from reading a lascivious book, or looking at an immodest object out of curiosity, it may be only venially or it may be mortally sinful, according to circumstances. In general, if in the case in question there is proximate danger of giving consent to the impure pleasure, or if its cause is of its nature such as to occasion great venereal pleasure, this will be mortally sinful even when only indirectly voluntary; in other cases it will be only venially sinful.[1] This same principle will guide us in questions concerning the greater or less malice of venereo-sensual pleasure.

[1] Cf. Book I, p. 8.

CHAPTER II

ON CONSUMMATED SINS OF IMPURITY

THESE are commonly reckoned as six in number: fornication, adultery, incest, criminal assault, rape, and sacrilege. All are grave sins against chastity, and the last five contain grave malice against other virtues as well. Something must be said about each one.

1. Fornication is the act of carnal intercourse between persons of different sex who are not married but who are free to marry.

Holy Scripture teaches us that fornication is a grave sin, for "fornicators shall not possess the kingdom of God."[1] "No fornicator hath inheritance in the kingdom of Christ and of God."[2] It is a grave sin not merely because it is forbidden by positive law, but because it is intrinsically wrong and contrary to the law of nature. Innocent XI condemned the following proposition: "It seems so clear that fornication in itself is not wrong, and is only evil because it is forbidden, that the contrary is altogether against reason."[3] This truth is sufficiently clear to unaided reason, for the human offspring requires for long years the constant care not only of the mother, but of the father as well, and so nature requires that the father should be certain, otherwise so great a burden could not be laid upon him. But the fact of paternity would be very uncertain if fornication were allowed, and so we must conclude that it is wrong in the nature of things. As St Thomas observes,[4] the fact that in particular cases the paternity of a child born out of wedlock is sufficiently clear, and the child's education can be provided for, does not militate against the force of the general argument, for in striving to lay down general rules of conduct we must have regard to what would happen ordinarily if such an action were lawful, not to what takes place in special circumstances.

2. Adultery is the act of carnal intercourse between persons of different sex of whom one at least is married to someone

[1] 1 Cor. vi 9; cf. Gal. v 19. [2] Eph. v 5.
[3] Prop. 48, condemned by Innocent XI, March 2, 1679.
[4] *Summa*, 2-2, q. 154, a. 2.

else. Besides being a grave sin against chastity, adultery is also a serious violation of justice, which prescribes fidelity to the marriage vows as long as they exist. Even if the other party whose marriage rights were violated by adultery should have given his consent to the sin, it still is against justice, for, like the right to life, marriage rights are inalienable, and cannot be renounced by those who own them. If both parties who sin together are married to someone else, there will be a double sin against justice committed by both of them, and the circumstance should be mentioned in order to secure the integrity of confession. This is clear, and it is confirmed by the condemnation of Proposition 50 by Innocent XI.

3. Incest is carnal intercourse with relatives by blood or by marriage. Besides its general malice against chastity, incest is against the special virtue of piety, which prescribes due reverence toward, and abstention from carnal sins with, those who are nearly related. With regard to parents and children at least, this law of reverence belongs to the law of nature; in other degrees of kindred up to the third, and of affinity up to the second, reckoned according to the rules of canon law, it is of positive ecclesiastical law; whether it is also of natural law in the nearer degrees is disputed. All carnal intercourse then, between relatives by blood up to the third degree, and between relatives by marriage up to the second degree, is incest either by natural or by ecclesiastical law. Community of blood and the close ties which exist between parent and child give a special and distinct malice to sins of impurity committed between them; in other degrees of kindred and affinity there is not the same community of blood nor equally close ties, and so the opinion of many approved theologians is probable that although incest in the first degree of the direct line of blood relationship is distinct in malice from the others, these latter are all of one moral species as far as the integrity of confession is concerned.

Carnal sins committed between those who are united by the ties of spiritual or legal relationship are also distinct species of incest.

4. Criminal assault is the using of violence against a woman to compel her to commit sins of impurity. It contains a grave and special sin against justice as well as the malice of impurity, and it is severely punished by criminal law. It is probable that there is no specific difference in the sin whether the woman be a virgin or not.

5. Rape is the violent abduction of a person from a place

of safety for the purpose of satisfying lust. The violence may be offered to the person abducted, or to the parents, or to those who have charge of her, and it adds a special malice of its own to the sin besides the malice against chastity.

6. By sacrilege is here understood the violation by carnal sin of a person, place, or object, consecrated to God. The doctrine concerning it will be sufficiently clear from what was said above under the First Commandment.

CHAPTER III

DE PECCATIS CONSUMMATIS CONTRA NATURAM

HAEC tria numerantur: pollutio seu mollities, sodomia, et bestialitas, de quibus in sequentibus articulis est agendum.

ARTICULUS I

De Pollutione

1. Pollutio est voluntaria seminis humani extra concubitum effusio, unde vocatur etiam peccatum solitarium.

Dicitur *voluntaria* sive in se sive in causa, ut distinguatur ab involuntaria quae ex variis causis oriri potest et praesertim naturaliter ad superfluitatem exonerandam in somno.

Dicitur *seminis effusio* ut distinguatur a *distillatione* qua humor minus densus alterius omnino speciei ex urethra profluit apud puberes et impuberes sive cum excitatione venerea sive sine illa.

2. Pollutio directe voluntaria est intrinsece mala et peccatum mortale. Constat ex Sacra Scriptura[1] ac ex constanti Ecclesiae doctrina. Innocentius XI hanc propositionem condemnavit: "Mollities jure naturae prohibita non est. Unde si Deus eam non interdixisset, saepe esset bona et aliquando obligatoria sub mortali." Idem probatur ex pessimis effectibus qui ex hoc vitio sequuntur tum individuo, ejus vires mentis et corporis debilitando, tum societati quatenus illi qui hoc vitio implicantur contenti voluptate solitaria matrimonii gravia onera fugerent cum ruina generis humani. In omni vero casu illicita est ita ut nulla exceptio detur, quia propter maximam proclivitatem hominum ad hujusmodi peccatum si unquam permitteretur facile occasiones sibi indulgendi fingerent ad propriam ruinam. Unde necesse est ut nunquam ne ad vitam quidem salvandam sit licita.

Plures antiqui Doctores probabiliter juxta St Alphonsum[2] tradiderunt licere semen corruptum sine sensu libidinis expellere. Moderni autem negant semen unquam corrumpi, unde fundamentum istius sententiae deesse videtur. Smegma vero

[1] 1 Cor. vi 10. [2] *Theol. Mor.*, 3, n. 478.

congestum sub praeputio removere licet et expedit ad pruritum minuendum.

3. Pollutio indirecte voluntaria est peccatum grave vel leve vel nullum juxta circumstantias. Si provenit ex causa graviter mala in genere luxuriae est peccatum mortale, quia volendo talem causam vult homo implicite etiam pollutionem. Si provenit ex causa leviter mala in genere luxuriae, ut ex curiosa lectione libri minus honesti, ipsa pollutio probabilius est tantum veniale, " quia cum pollutio non sit volita in se, sed tantum in causa, eo gradu mala erit, quo mala est ipsa causa."[1] Si praevidetur secutura per accidens ex honesta actione ut ex equitatione, ex modo decumbendi rationabili causa assumpto, nullum erit peccatum. Si vero per accidens sequitur ex actione mala in alia specie quam luxuriae, ut ex ebrietate, ex violatione jejunii, videtur esse veniale, cum aliqua admittatur culpa etiam contra castitatem quando pollutio praevidetur secutura ex actione ad quam ponendam nullum detur jus. Aliqui excusant ab omni etiam veniali culpa pollutionem quae per accidens sequitur ex actione venialiter tantum mala in alia specie quam luxuriae.[2] Ut patet in hac quaestione praescindimus a periculo consentiendi in delectationem ex pollutione ortam, quod non supposuimus.

Pollutio in somno quae accidit ex praevio peccato mortali in genere luxuriae, est ipsa peccatum mortale; si sequitur ex peccato veniali in genere luxuriae vel ex peccato mortali ebrietatis, est ipsa veniale; aliter est nullum.

Siquis pollutionem dum patitur evigilatus fuerit, non datur obligatio positive eam reprimendi, dummodo nullus consensus detur: mens debet ad Deum vel ad alia converti ne consentiat in malum.

Dummodo adsit justa et proportionata causa exercendi actiones, ut a medicis qui mulieribus medentur, ex quibus praevidetur pollutio secutura quae non intenditur nec cui consensus datur, haec nullum erit peccatum, ut clarum est ex principio duplicis effectus.

4. Quamvis mulieres semen non administrent sed ovum semine foecundandum in opere conjugali, similis tamen voluptatis completae solitarie sunt capaces sicut sexus virilis. Unde sicut apud viros specie distinguuntur peccatum tactus impudici incompletum et pollutio, ita apud feminas peccatum solitarium consummatum a peccato nonconsummato specie distinguitur. Ita cum communi sententia videtur tenendum. Non semper tamen apud feminas quae pollutionem patiuntur

[1] St Alphonsus, *Theol. Mor.*, 3, n. 484. [2] *ibid.*

adest effusio extra vas, sed intus excretio manet. A pollutione vero, ut patet, sedulo sunt distinguenda menstrua, quae post pubertatem adeptam usque ad menopausim fere omnes feminae sine aestu libidinis singulis mensibus experiuntur.

5. Impuberes qui semen prolificum non habent voluptatis perfectae quae peccatum consummatum comitatur sunt incapaces, unde saltem probabiliter peccatum pollutionis physice committere nequeunt. Voluntarie sibi complacendo motibus impudicis mortaliter quidem peccant impuberes, sed probabiliter propter dictam rationem est peccatum tantum tactus impudici.

6. Vidimus pollutionem, quae ex causa leviter tantum mala in genere luxuriae sequitur et quae in se non est voluntaria, esse veniale tantum peccatum. Sed quaestio est apud Doctores controversa utrum si propter specialem alicujus dispositionem vel fragilitatem pollutio fere semper ex tali causa sequitur iste sub gravi ab actione ponenda teneatur eo quod causa tunc graviter in effectum influere censeatur, an tantum sub levi. Si adsit proximum periculum consensus dandi, omnes admittunt adesse obligationem ab actione ponenda abstinendi gravem, aliter vero probabilis videtur sententia plurium obligationem esse solummodo levem. Nam adhuc vera manet ratio a S Alphonso assignata doctrinae supra traditae, " quia cum pollutio non sit volita in se, sed tantum in causa, eo gradu mala erit, quo mala est ipsa causa." Ratio vero cur causa in hoc casu gravius influere in effectum videtur, est subjectiva agentis dispositio quae non est volita, nec proinde imputabilitatem effectus afficit.

Articulus II

De Sodomia

Sodomia est actus venereus completus in vase indebito, et est peccatum gravissimum contra naturam. Concubitus cum eodem sexu et copula per anum est sodomia perfecta, concubitus diversorum sexuum et copula per anum est sodomia imperfecta quae specie a priori differt. Si sodomia reservatur, nisi aliud expresse a reservante declaratur, intelligitur sodomia perfecta.

Plures tamen theologi docent sodomiam consistere in concubitu ad indebitum sexum, ita ut sit indifferens qua parte coeatur, si fiat applicatio membri virilis ad sexum indebitum cum pollutione. Quae sententia sane est probabilis, imo ut aliqui dicunt communis, unde sufficit si confessarius

intelligat fuisse concubitum cum affectu ad sexum indebitum et cum pollutione, nec est necessarium inquirere de modo coeundi.[1]

Sodomia igitur consistit in concubitu cum sexu indebito cum pollutione, unde siquis se polluit simplicitur tangendo alium, malitiae ejus inconscium sine affectu ad personam, et sine concubitu, habetur pollutio non sodomia. Si alter etiam peccat, circumstantia complicitatis in confessione erit manifestanda. Probabile est specie non distingui peccatum agentis et patientis, si ex utraque parte adfuerit pollutio.

Articulus III

De Bestialitate

Bestialitas est concubitus cum bestia.

Dummodo adsit pollutio indifferens est sive bestia sit masculina sive feminina, qua specie sit, vel qua parte coeatur, cum malitia hujus peccati consistat in accessu ad diversam speciem, quacum generatio haberi non possit. Gravius est peccatum quam etiam sodomia, cum in hoc peccato non servetur eadem species. Constat vero hodie generationem non sequi ex commercio hominis cum bestia.

Sodomia et bestialitas gravissime lege ecclesiastica et etiam municipali puniuntur (Can. 2357, 2359).

[1] St. Alphonsus, 3, n. 466.

CHAPTER IV

ON NON-CONSUMMATED ACTS OF IMPURITY

1. As we saw above, mortal sin is always committed whenever venereal pleasure is directly sought or deliberate consent is given to it, even though the venereal excitement be little and stop short of consummated sin. In other words, there is no parvity of matter, as theologians say, in sins of impurity when the venereal pleasure is voluntary in itself. It follows from this that non-consummated acts of impurity such as immodest touches, looks, talk, reading, will be mortally sinful whenever they are indulged in with a view to exciting venereal pleasure.

2. Even though the excitement of venereal pleasure be not directly intended, yet immodest touches will be more or less sinful in proportion as they are more likely to excite venereal pleasure, and there is no just cause for allowing them. If there is a just and proportionate cause for permitting immodest touches and any venereal pleasure that may ensue is not intended or consented to, then there is no sin in them. When there is no good reason for allowing immodest touches, they will be mortally sinful if, as a general rule in normally constituted persons, they tend to cause great venereal excitement; otherwise they will be venially sinful.

Hinc: (*a*) Tactus in partes inhonestas alterius personae diversi sexus sunt mortalia, imo alterius personae ejusdem sexus, nisi leviter ex joco vel petulantia fiant.

(*b*) Tangere genitalia brutorum, vel partes minus honestas alterius personae per se veniale non excedit.

In the same way immodest looks may be gravely or venially sinful, or perfectly lawful, according to circumstances. When there is just cause for them and no harm is intended or consented to, they are lawful. If there is no good reason for them, and of their nature they tend to cause great venereal excitement, they are mortally sinful; otherwise they are only venially sinful.

Hinc: (*a*) Aspicere ex curiositate pudenda personae alterius sexus, vel concubitum humanum, est mortale peccatum, nisi brevissime fiat, vel a longa distantia, vel si aspiciens sit senex, frigidus, talibus assuetus, quia tales parum moventur. Facilius

a mortali excusatur qui ex curiositate aspicit picturas obscoenas, quae non ita commovere solent.

(*b*) Leve peccatum per se non excedit aspicere ex curiositate animalia coeuntia, partes minus honestas mulieris, partes obscoenas ejusdem sexus.

(*c*) Actus praedicti culpa vacant si ex proportionata utilitate vel necessitate exerceantur.

Similarly immodest conversation will be mortally sinful if it is about very obscene subjects between young persons, especially if they be of different sexes. It will be venially sinful if the subject be less objectionable, or if a dirty joke is made in passing. The confessor may, as a rule, presume that grown-up penitents, especially if they be married, who accuse themselves of immodest talk, are only guilty of venial sin; and so he may spare himself and them any questioning on the matter.

The reading of very obscene books without any good reason can hardly be excused from grave sin, unless by experience the reader knows that they have little or no effect upon him, and this should not be lightly presumed. Reading novels in which the passion of love is depicted in warm colours is very dangerous, especially for the young, and unless there is some good excuse for it can hardly be without some sin. This will all the more be true of novels which are suggestive of evil, and fill the mind with dangerous thoughts.

3. The morality of kissing and embracing is regulated by the same principles as the above. Kissing in the ordinary way of greeting or leave-taking between relations and friends, according to the custom of the country, as theologians say, is of course harmless and allowed. Even if such marks of pure affection or civility unintentionally sometimes cause venereal excitement, no notice should be taken of it. Apart from this, kissing and embracing, especially between different sexes, naturally tends to cause venereal excitement, and is more or less sinful. Mortal sin will be committed as a rule by indulging in passionate and prolonged embraces and kisses; otherwise the sin will be only venial. Those who intend marriage and are already engaged to each other have an excuse for showing each other the ordinary signs of affection, but they should use their privilege with due caution and Christian prudence. As a rule, little harm will be done if they have a witness of their conduct, or if they only permit themselves to do what they would do if such a witness were present.

4. Non-consummated sins of impurity are specifically distinct from consummated sins, in the same way as attempted

homicide is specifically distinct from homicide. Impure touches, however, and lascivious kisses and embraces contract the malice of the circumstances of the object, just as consummated sins do. For, just as fornication with one bound by a vow of chastity or with a relation is not simple fornication, but contracts the malice of sacrilege or incest according to the circumstances, so impure touches of the same persons would also be sacrilegious or incestuous. The reason is because sins receive their specific malice from the object, and sins of touch take their malice from the concrete object as it exists with its special circumstances.

Impure speech and looks, on the contrary, do not seem to contract the malice of the circumstances of the object, for such sins are affected by the general character of the object only, and not by its special circumstances. This, at least, is the opinion of many theologians.

It is a disputed point among divines whether impure touches, looks, talk, or reading, are specifically distinct from each other apart from any difference in the object. Would it, for example, be sufficient to say in confession, " I committed a sin by indulging in venereal pleasure by myself," without mentioning whether it was procured by touch, or look, or other means ? Although the common opinion is that such a general form of self-accusation would not be sufficient, and that the penitent must say whether the sin was one of touch, or look, etc., yet the contrary view seems probable, for such imperfect acts are wrong, not precisely in themselves, but on account of their tendency to excite venereal pleasure. The reason, then, and source of their malice is the same, and so they would seem not to be specifically distinct as sins, though they are physically distinct acts.

PART VII

THE SEVENTH AND TENTH COMMANDMENTS

THE Seventh Commandment is, "Thou shalt not steal,"[1] and therefore directly and explicitly it forbids theft, but implicitly it commands us to observe justice in our dealings with others. The Tenth Commandment is, "Thou shalt not covet thy neighbour's goods,"[2] and so it forbids internal sins against justice. The subject-matter, then, of these commandments is the virtue of justice, of which we have now to treat.

DIVISION I

On Justice and Right

CHAPTER I

THE NATURE OF JUSTICE AND RIGHT

1. THE word "justice" is used in a variety of senses, but here it is used in its strict meaning to designate the moral virtue which inclines its possessor to give to everyone his due or his right.

The habit of giving to everyone his due from principle because it is right and proper is obviously a virtue, and it is a moral, not a theological, virtue, for its immediate motive is not God, but the natural honesty and uprightness of so acting. Justice is a moral virtue which resides in and perfects the will, not the intellect, like prudence; it inclines the will to wish and to execute what is right. Justice inclines the just man to give his due to everyone irrespective of who he may be. It does not consider the relation in which that other stands to God, or to one's self, as charity does; nor precisely what it is becoming in the just man to do, so that his actions may be worthy of himself, as does temperance, for example; it only considers what is owing to another, what is his due; and

[1] Exod. xx 15. [2] Exod. xx 17.

because it is the right thing that everyone should have his own, justice inclines to give it to him.

What is due to another in justice and is therefore his strict right must be distinguished from what a man has a claim to on some other ground. A poor man who cannot support himself has a claim on our help, but out of charity, not out of justice. He is our brother; he is a child of our common Father in heaven; he is destined to be a fellow-citizen with us for ever in the kingdom of heaven; the bond of mutual love which binds all such in one body, and makes them one big family, requires that all who can, should, out of their abundance, assist those who are in want. But this does not cause the abundance of one to belong to a needy neighbour in justice; it only prescribes that as much as is required to succour him in his necessity should be given him out of charity. A sufferer who is in pain has a claim on my sympathy and pity, not that it would be unjust to deny him my sympathy, but because pity and compassion require it of me. But when ten pounds are due to another in justice, those ten pounds belong to him; they are his property; he has a right exclusive of all others to all the benefit that can be derived from them, because they are his. Because they are his he can dispose of them as he pleases; he can put them in the bank, or spend them, or give them away; he would wrong no one even if he threw them into the sea. Anyone who steals them, or to whom he lends them, must, if he would be just, restore them to the owner, because justice requires that all should have their own.

2. We may divide the species of justice into individual or commutative and social justice.

Commutative justice regards the relations between man and man in their private and individual capacity. It supposes a perfect distinction of rights between them, and prescribes that these should be duly observed and respected. It exists between physical and moral persons alike, or between a physical and a moral person, provided that their rights are perfectly distinct from each other.

Social justice regulates the mutual relations between the individual and the society or State to which he belongs. As a member of society the individual has certain duties toward it; he must contribute his share to the common burdens; he must be ready to defend the common weal at the call of authority; he must obey just and equitable laws. This duty of rendering to the State what is its due is called *legal* justice. On the other hand, the State has its obligations toward its

subjects; it must distribute burdens, honours, and rewards equitably without showing favour to particular classes and persons; not indeed with absolute arithmetical equality all round, but according to respective merits. The virtue which should regulate the distribution of burdens and rewards among its subjects by the State is called *distributive* justice. To such as have committed crime and injured the common weal the State metes out condign punishment according as *vindictive* justice demands.

There is a difference of opinion among Catholic writers as to whether legal, distributive, and vindictive justice, which we have grouped together under the name of social justice, are really subordinate species of the virtue, or whether commutative justice is the only species that may in strictness be so called. Whatever view be taken we must allow that in commutative justice alone is there a perfect distinction between debtor and creditor; it alone observes arithmetical equality in satisfying its obligations; it alone binds to restitution after being violated. In social justice, on the contrary, there is no perfect distinction between the State and its subjects; social justice does not prescribe the observance of arithmetical equality, nor does its violation bind to restitution, except when by the same act commutative justice has also been infringed.

3. That which in justice is due to me is my *right*, as it is called. I have a right to my life, to my good name, to my property; and anyone who deprives me of these rights is guilty of injustice. Rights, then, are the subject-matter of justice, and in this, its strict sense, a right may be defined as a moral power of having, doing, or exacting something.

It is said to be a moral power to distinguish it from the mere physical capacity of brute force, which confers no rights of itself. It is a moral power which may not without injustice be interfered with. It is the power of having and possessing as one's own something which man values and which serves his convenience and wants; or of doing something, of giving scope to his bodily or mental activity; or of exacting some service as due to him from another.

A right is *in re* or *ad rem*. A right *in re* is a right which one has to something determined and already his own. In order that one may have a right *in re* the object must already exist; it must not be merely possible or future; it must be determined and separate; it must belong to the person by a title of justice so that it is his. If one of these conditions is wanting but

notwithstanding someone has a claim in justice that something should become his property, he has a right *ad rem* to it. Thus a farmer has a right *in re* to his harvest after he has gathered it; before it has grown he has only a right *ad rem*. The right of a servant to his wages is *ad rem* until they are paid; after they are paid his right is *in re*.

A right *in re* seems to be practically equivalent to ownership (*dominium*). Ownership is absolute or qualified. Absolute ownership is the unlimited power of disposing of a thing for one's own benefit. The absolute owner of a horse may use him, sell him, give him away, or kill him, without violating justice; he may do what he likes with his own. If ownership is limited in some way so that the owner has not a right to all the uses to which the object may be put, the ownership is qualified. Qualified ownership of the thing while its use belongs to someone else is called direct; qualified ownership of the use of what belongs to someone else is called indirect ownership.

According to English law, a subject is incapable of absolute ownership of realty; he is only capable of a qualified ownership therein, although to all intents and purposes an estate in fee simple is equivalent to absolute ownership. A qualified property of many different kinds may be had in realty, and both an absolute and qualified property of many different sorts may be had in movables. The various kinds of property, especially in immovables, are recognized and determined by law, which enforces the rights and obligations annexed thereto. In different systems of law there will be different kinds of property recognized. It will be sufficient for our purpose merely to mention *ususfructus*, *usus*, *habitatio*, *servitus*, of the Roman and canon law.

In English law the quantity of interest which a man has in lands and tenements is called an estate, of which there is a great variety: equitable and legal estates; estates of inheritance and not of inheritance; estates of freehold interest and less than freehold, such as estates for years, estates at will, and estates at sufferance.

CHAPTER II

OBJECTS OF OWNERSHIP

1. We will here consider the various objects which can be owned by men, and to the exclusive use of which they can lay claim as being due to them in justice. We saw above that God has reserved to himself the dominion of human life; he is the God of life and of death, so that an injury is done to God by suicide or by unjustifiable homicide. Not even the State can have the absolute ownership of human life; it can never directly kill the innocent, although, as far as the common good demands it, the State may take the life of malefactors, and may require that each and all should be ready to defend the common weal even at the risk of life itself. No one, then, but God has the absolute ownership of human life or of man's limbs and members.

Each one, however, has a qualified ownership in the faculties which God has given him. His activities of mind and body have been granted to man that by using them in a proper way he may do good and avoid evil, and thus secure the end of human existence. A man, therefore, is under the obligation imposed by God of making use of his mental and bodily faculties, and he has a consequent right to do so, as far as he does not thereby injure others.

When man by his labour has produced something which serves his wants and convenience, he has a right to the fruit of his toil; this is his property, and he cannot be deprived of it without injustice. This applies to what he has produced with his own toil, out of his own material, with his own resources.

A man's reputation, then, inasmuch as it is the fruit of his merit and industry, is his property, and he cannot be unwarrantably deprived of it without injustice. He may, however, surrender it himself for good reason; he may write his confessions, like St Augustine, for the purpose of self-humiliation and for the instruction and edification of others; otherwise he must have a care of his own good name, without which he can do little good, and may do great harm to others.

2. Similarly, by the law of nature a book, design, or composition belongs to the author, and a new invention to the

inventor. These things and others of the same kind are the fruit of the author's or inventor's thought and labour, and anyone who stole them and published them without their owner's consent would commit a sin against justice.

Among modern civilized nations these rights are protected by municipal laws and international agreements, and, inasmuch as these determine the vague and uncertain prescriptions of the natural law, they bind in conscience.

The exclusive right of printing or otherwise multiplying copies of books, etc., is called in English law copyright. It extends not only to books, but to every volume, part, or division of a volume, pamphlet, sheet of letterpress, sheet of music, map, chart, or plan separately printed; to engravings, prints, sculpture, models, busts, paintings, drawings, photographs, designs, dramatic and musical representations.

Copyright is protected throughout the British dominions and the principal countries of Europe, which form the Copyright Union. On certain conditions copyright is now protected in the United States of America, and foreign authors may acquire copyright within the States by complying with those conditions.

English law grants copyright for the author's natural life and for fifty years longer.

In the United States the original terms run for twenty-eight years; it may, however, be renewed for a further term of fourteen years, making forty-two years in all.

In the same way patent right, or the right of the inventor to reap the benefit of a new contrivance, is protected in England on certain conditions for fourteen years, which protection may be extended for a further period of seven or fourteen years if the inventor has not yet reaped the full benefit of his invention, and such patent is for the public benefit. The period to which patent right extends in the United States is seventeen years.

There is a controversy among theologians as to whether the natural law of itself forbids the reissue by another without the author's consent of a book which has once been published. Some deny this on the ground that by being published, apart from the prescriptions of positive law, a book becomes public property, and anyone who buys a copy may make what use of it he pleases. He is merely disposing of what is his own. The contrary opinion, however, seems better grounded, for the author in publishing a book makes over indeed to the buyers of it certain advantages, but there is nothing to prevent

him reserving the right of issuing it again to himself. The buyer of a copy may make the contents of the book his own and work them up again in any form of his own that he chooses; he buys the material part of the book, paper, binding, etc., and may make what use of them he pleases; but he does not purchase the right to issue the book again, and he violates justice if he does so against the author's wish. The same holds with regard to patent right.

This controversy is of little practical importance, for sufficient protection is provided in most civilized countries by positive law.

3. We saw above that no one except God can have an absolute property in man's life or members. No man, then, can become the chattel of another so that he may lawfully be disposed of like a brute beast. Christian teaching has banished such an idea from Christendom at least. On the other hand, there is no difficulty in admitting that one man may make over his services to another for as long as he pleases. Theoretically, therefore, there seems no reason for saying that slavery is against the law of nature. We here understand by the term the state of perpetual subjection of one to another so that he owes that other his life service in return for board, lodging, and clothes. Practically, great abuses usually accompanied slavery, and we must allow that it is out of harmony with the spirit of the Gospel. Chiefly through the wise and gradual action of the Church, it has ceased to exist as an institution among civilized nations. However, we must not forget that penal servitude is still the just and recognized punishment for grave crime. Merely looking at the question from the point of view of the strict law of nature, we must acknowledge that a state of slavery arising from contract, or birth, or in punishment for crime, or as the result of a just war, is not in itself immoral.

4. Animals and the earth, together with all that they produce, may become man's absolute property. God has imposed on him the obligation of maintaining himself and those who are dependent upon him, and he has a consequent right to make his own whatever is necessary and useful for that purpose, if it has not been appropriated by someone else. He has a right to provide not only for his immediate wants, but for the future also; not only for himself, but for his offspring. In other words, nature herself gives man the right of private property. This right is not given by the State; it is anterior to the State, and its preservation and defence is one of the

chief reasons for the existence of the State. It may indeed be regulated by the State, as far as is necessary for the common good, but it is beyond the power of the State to do away with it.[1] No Catholic is at liberty to deny the lawfulness of private property and its necessity in the general conditions of the modern world.

Socialists, indeed, advocate the nationalization of the land and of all the means of production and exchange as a sovereign cure for the economic evils of the world. The plan militates against the right of private property; it is unworkable, and even if it could be introduced it would be no cure for existing evils, and would introduce other new ones. The fuller treatment of this, a practical question in our days, scarcely belongs to moral theology; it is not in the confessional that such questions are treated. The student should consult books on ethics, or special works written on socialism or collectivism.

[1] Leo XIII, on the Condition of Labour, May 15, 1891.

CHAPTER III

WHO MAY OWN PROPERTY

SECTION I

General Principles

1. NONE but an intellectual being endowed with intellect and will can own property. For such alone, or persons as distinct from things, are the subjects of rights; persons alone can freely dispose of objects which are necessary or useful for the attainment of man's destiny. Persons alone can suffer a formal injury by the wilful violation of their rights against their will, and so they alone are capable of having rights and holding property.

2. God, who is the Creator of all things, is also their universal Lord and Master. He can do what he pleases with his own; however he may treat his creatures, they cannot complain of God's injustice toward them. He is bound only by the laws of his own infinite Goodness and Wisdom.

Other pure spirits whom God has created might conceivably have rights of ownership, but as they have no use for material things with which we are specially concerned, we need not further consider them in this connection.

3. All men, even imbeciles, who will never have the use of reason, and infants still unborn, are subjects of rights and capable of holding property. For they all require many things for their support, preservation, and defence, for the perfect development of all their faculties, mental and bodily, and for the orderly and secure attainment of their end. As, then, they are under the obligation of striving for the attainment of their end, and they have the right to do so, they have also the right to the necessary means. This reasoning is not invalidated by the incapacity of infants and imbeciles to use their faculties and administer their property. Their rational nature gives them their rights; their capacity to use them is not a necessary condition of their existence. A man who is asleep retains his rights, though he cannot then exercise them. Besides, whatever defect there might be in the title of infants and imbeciles to the rights of men is supplied by the provisions of positive

law, which confers rights of property independently of the knowledge or acceptance of the owner.

4. Inasmuch as man is a social animal, and develops his faculties in the society of his fellows, whose help he constantly needs, nature herself has given him the right to form private societies, companies, or corporations, for the furtherance of common ends, independently of that larger public society which we call the State, and to which all belong. As Leo XIII teaches: "Private societies, then, although they exist within the State, and are severally part of the State, cannot nevertheless be absolutely and as such prohibited by the State. For to enter into a society of this kind is the natural right of man; and the State is bound to protect natural rights, not to destroy them; and if it forbid its citizens to form associations, it contradicts the very principle of its own existence; for both they and it exist in virtue of the like principle—namely, the natural tendency of man to dwell in society."[1]

The State, of course, has the right of control over such societies as are founded for civil purposes, and they are subject to the just laws which the State may make in their regard. English law acknowledges both corporations aggregate, consisting of more than one person united for the purpose of pursuing a common end, and corporations sole, consisting of but one person like the sovereign or the rector of a church. A corporation is a moral entity, a fictitious person, with rights of its own, distinct from the rights of the physical persons who compose it. As far as property is necessary for the attainment of its end, a corporation has the right of ownership, though this right is subject to the control and regulation of the supreme authority. Leo XIII in his encyclical on labour warmly approves of workmen forming their own unions and societies for the defence of their rights and the furtherance of their welfare.

Section II

Property Rights of Minors

1. Apart from positive law, a minor is capable of owning property in his own right just as if he were of full age. Considerable rights over a child's property were granted to the father by Roman law. The minor had, indeed, complete ownership of what he earned by military service or by any public office, but the usufruct of what came to the son in other

[1] Encyclical on the Condition of Labour, May 15, 1891.

ways belonged to the father. Similar rights are commonly granted to the father by those modern systems of law which are derived from the Roman. According to English law, however, the father as such has no rights over any property which belongs to his child. During the child's minority, if no trustee or guardian of his property has been appointed, the father will usually be appointed guardian, and in that capacity he is bound to administer the property for the benefit of his child, nor may he use it for his own profit.

On the other hand, English law gives no right to children to share in their father's property except in case of intestacy, differing in this also from the Roman and derived systems. The parent may by our law leave his property to whomsoever he will, unless, of course, it is entailed. If a father die intestate, one-third of his real estate, if he was possessed of any, goes to his wife as dower, unless it is barred as it is in the majority of cases; the rest goes to the eldest son or his issue, or if there were no son the rest is divided equally among the daughters. Of the personal estate of a father who died intestate one-third goes to the widow, and the other two-thirds to the children in equal shares.

2. A child who has the means is under a moral obligation of supporting his parent when he is incapable of supporting himself, and this obligation is enforced by English law.

Moreover, if a minor is earning wages the parent is not bound to support him free of cost, and until he is sixteen it would seem that the parent is justified in taking his earnings. Even after that age it may well be that an elder son or daughter who is in receipt of wages is bound to help to support younger brothers and sisters if the family is numerous. Apart from these obligations a minor acquires a full right to what he earns, and may enter into a contract with his parents for the payment of the cost of his board and lodging, reserving what is over of his wages for himself. If a minor works in his father's house no contract for wages will be presumed; he is supposed to forego them, or his keep is supposed to be an equivalent, unless an express contract for wages is entered into between them.

3. Minority ceases on the completion of the twenty-first year of the minor's age, or by emancipation. A minor is emancipated from his parents' control by marriage, by entering into religion, or when an adult child leaves the paternal household and enters the army or ordinary service as a domestic servant or labourer.[1]

[1] Eversley, *Law of the Domestic Relations*, p. 599.

Section III

Property Rights of Married Women

1. The fact that a woman marries does not of itself take away or lessen her natural capacity to possess property. Her husband is indeed the head of the family, and is presumed to be better able to administer family affairs than his wife. Moreover, the law of England used to give the husband very extensive rights over his wife's property. For in general any freehold estate of which the wife was seized at the time of the marriage, or of which she became seized afterwards, became vested in her husband and herself during the coverture, and the husband was entitled to the profits, and had the sole control and management. By marriage a husband became possessed of his wife's leaseholds in her right. He was not only entitled to the profits and management of them during the joint lives, but he could dispose of them as he pleased by any act during the coverture. The personal chattels of the wife became in general the absolute property of the husband.[1]

By degrees inroads were made on the rigour of the common law, and means were found to secure separate property to a married woman. By the Married Women's Property Acts of 1870 and 1882 great changes were introduced, so that now a woman married after the first day of January, 1883, possesses as her separate estate all her property, whether acquired before or after the marriage. All women who were married before the above date similarly possess as their separate estate all property which comes to them after that date. Practically, therefore, during her life and that of her husband a married woman has rights of property as if she were single.

Furthermore, she has a right to support for herself and her children, even those of a previous marriage, at her husband's expense, according to her condition in life, and she may effect an insurance on her own or on her husband's life for her separate use.

2. Besides the foregoing advantages a married woman who survives her husband is entitled to dower, unless some act has been done to curtail her right—that is, she is entitled to hold to herself, for the term of her natural life, the third part of all the lands and tenements of which he died seized in fee simple or fee tail, and of which any issue that she might have had could have been heir.[2]

[1] Stephen's *Commentaries*, 2, p. 277. [2] *ibid.*, p. 282.

If her husband dies intestate and without issue, the widow is entitled to the whole of her husband's estate, both real and personal, when such estate does not exceed five hundred pounds in value; if over that amount she takes five hundred pounds out of the real and personal estate ratably before any division is made, and after that the share in the remainder to which she was entitled before the passing of the Intestates' Estate Act, 1890.

Before the passing of this Act a widow of a husband who died intestate took one-half of the personalty if there were no children of the marriage, otherwise she took one-third. Moreover, one-third of the intestate's real property went to the wife for life. These rights, therefore, she still possesses.

3. A married woman can now make a will and leave her separate property according to law to whom she pleases. In conscience she must of course take account of the needs of her surviving relatives and of other legitimate claims on her remembrance. If she dies intestate, all her personalty goes to her husband; her realty also goes to him for life, afterwards to the only child, or to the eldest son or his issue if he be dead, or to the daughters equally.

Section IV

The Right of the Church to Possess Property

1. We have already seen that not only physical persons but also corporations or societies can own property. The Church is a perfect, independent, and visible society founded by Christ our Lord, and endowed by him with all the rights and privileges which are necessary to enable her to attain her end. This end is the sanctification and salvation of souls by the preaching, propagation, and exercise of the Christian religion. It is obvious that for the support of the Church's ministers and missionaries, for the building and upkeep of churches, for the decent and proper exercise of religious worship, and for numerous other purposes, ample revenues and lands are required, and, inasmuch as the Church has the obligation and the right to work for the end for which she has been founded by God, so she has the right to the necessary means. This reasoning is confirmed by the condemnation by the Popes of several false propositions bearing on the Church's right of ownership[1] (Can. 1495).

[1] Props. 10, 32, 33, 36 of Wyclif; and Prop. 26 of the Syllabus.

2. The general truth that the Church has a right to own movable and immovable property is certain, and does not depend for its validity on the question as to who is the definite owner of Church property. This was a disputed question, some theologians maintaining that God is the immediate as well as the ultimate owner, inasmuch as Church property is said to be given to God; others taught that the universal Church or the Pope is the owner; others, again, that the corporations constituted by individual churches, dioceses, religious congregations, and orders are the real owners of the ecclesiastical property belonging to those institutions. This last opinion is commonly accepted nowadays, and it seems more in keeping with the intention of the donors of such property, which is usually the benefit of a particular religious institution for the honour of God, and in this sense they make their offering to God (Can. 1499, sec. 2).

The administration and management of Church property belong to those ecclesiastics who have been lawfully placed over the churches, dioceses, institutes, etc., to which the property belongs; and the Pope as the supreme head of the Church on earth has the supreme administration, or the *altum dominium*, as it is called.[1]

3. The profits derived from ecclesiastical property should, according to the Church's law and natural equity, be devoted to those purposes for which the donors gave the property. If this cannot be done because the object for which the property was given no longer exists or for some other legitimate cause, it is for the Pope to make the needful dispositions so that the intention of the donors may be carried out as far as possible (Can. 1514).

No immovable ecclesiastical property, or even movable when it is of considerable value, may be alienated without the leave of the Holy See, and the penalty of excommunication is incurred by all who attempt to do so or to receive the same without the requisite permission. The Pope for good cause may of course alienate Church property, as he has not infrequently done, especially in times of upheaval, as after the Reformation in England and after the French Revolution (Can. 2347).

[1] Can. 1519-1521, etc.

Section V

Property Rights of Clerics

1. We do not propose to treat here of the capacity of religious to own property; that question will be best considered when we treat of the state of religious. Here we only inquire into the property rights of the secular clergy.

The property of the clergy is divided by theologians into four kinds. What they possess as private persons, whether it has been given or bequeathed to them or they have inherited it, is called their patrimony. Quasi-patrimony is what they have obtained by the exercise of their ministry in stole fees, stipends, and casual offerings. Ecclesiastical goods are derived from the revenue of benefices. Savings are what a cleric has acquired by living sparingly and which he might have spent by living according to the ordinary standard.

Of these different kinds of property, patrimony and quasi-patrimony belong to the cleric; they are his private property, of which he has the ownership just like anybody else, for he is not deprived of the right to possess property by becoming a cleric. What he saves also from what he might have spent lawfully on his support belongs to him, for the labourer is worthy of his hire; he has a strict right to a decent living from the revenues of the Church, and what he saves from the sum required for this belongs to him as his own.

There is a difficulty concerning the profits derived from his benefice if the cleric has one. He may, of course, use the income derived from this source for his maintenance according to his rank; but supposing that a balance remains over, what must he do with that? Ecclesiastical law prescribes that he must employ it for pious purposes, and must not squander it or enrich his relations with it. He is bound under pain of sin to give it to the support of religion, or to the poor, or for educational or other pious causes. If he does not do this, he certainly sins against obedience; but does he also sin against justice, and is he therefore bound to make restitution? This is a disputed question among divines. The more probable opinion is that he does not sin against justice and so is not bound to restitution; for the income derived from his benefice is his own property, and he may do what he pleases with his own, unless there be some law which restricts his free disposal of his property. In this case there is such a law, which must be observed, but which for all that does not make

an act which it prohibits unjust; it only makes it unlawful (Can. 1473).

2. In English-speaking countries there are few well-endowed benefices, so that in general the clergy have to be supported by the offerings of the faithful. As Leo XIII says in his Constitution *Romanos Pontifices*, May 8, 1881, the offerings of the faithful were not regarded as ecclesiastical property where religion and the clergy were sufficiently provided for from other sources. In Britain, however, the offerings of the faithful are almost the only means available for the maintenance of divine worship, the building and repair of churches and schools, the support of charitable institutions and of the clergy. Hence it becomes a matter of importance to be able to decide what offerings belong to the clergy as their own property, and what constitute ecclesiastical property and belong to the Church. Of the latter property the clergy are only the administrators, and they are bound to render an account of their administration to their superiors and to God. Rules for settling what offerings are private and what ecclesiastical property were drawn up by the Second Provincial Synod of Westminster, approved in the year 1856; and Pope Leo XIII sanctioned those rules and ordered them to be observed wherever his Constitution *Romanos Pontifices* should be in force. I here give Father Guy's version of the rules:

" (1) Offerings of the faithful for the propagation and ornament of religion, for the support of the clergy, the relief of the poor, and other pious uses, are considered as made to God and the Church, and the administrators or guardians of them, whether ecclesiastics or laymen, are to be deemed merely dispensers of them, under an obligation of rendering an account to God of their stewardship. As here now it is required among the dispensers that a man be found faithful in those things which concern the rightful administration of Church property, it seems proper that in this synod we should treat this matter more fully, inasmuch as having been occupied with matters more important in the First Provincial Council, we deferred the consideration of this subject to a more convenient opportunity.

" (2) Every effort must be made to determine, if there be any doubt, the intention and purpose of the donor or testator of each fund, and that the proceeds of it may be rigidly applied to the use prescribed by him.

" (3) If this intention cannot be ascer ained from any trustworthy document, rules or canons by which a safe

judgement may be formed in such cases should be observed.

" (4) Whenever a church or school or any other building intended for religious uses is erected or provided, either wholly or in part, from money contributed by the faithful, or granted by any society administering the alms of pious Catholics, every edifice of this kind is to be considered as belonging for ever to the place where it stands.

" (5) The same judgement must be passed on buildings erected by any benefactor, unless it is clearly proved that he made a declaration that in erecting such an edifice he did not intend it for the advantage of the faithful of that place, but that he wished to confer a benefit on some particular order. The rules laid down in this and the preceding number as to rights in foundations are in the case of Regulars to be applied to new foundations only.

" (6) But the Bishop shall not be allowed on this account to take away a mission lawfully entrusted to any religious order. These rules regard merely a case in which a religious body either cannot or will not retain the care of a mission—for example, if a superior remove it to some other place, or for any other reason it there cease to exist altogether, and not for a time only.

" (7) If, however, any mission be founded altogether or for the most part by funds belonging to any religious body, which for good reasons may wish to leave entirely and go elsewhere, we recommend that a distinct agreement be made between the Bishop and the superiors of the order as to what has to be done; so that on the one hand just rights may not suffer, and on the other no scandal may arise nor grievous loss of souls ensue.

" (8) Much less is it lawful for any cleric, or even for the Bishop himself, to alienate Church property, as is evident from almost numberless decrees of canon law. If, however, on account of reasons approved of by the canons, such an alienation become necessary, the priest can never act in this matter without the authority of the Bishop, nor the Bishop without the precautions required by canon law.

" (9) In every mission where money is contributed by the faithful in the ways hereafter described it is to be accounted Church property, and not a donation to the priest. For from this money he must provide not only for his own decent support, but for the expense of religious worship, for the maintenance of the fabric, for payment of debts, where there

are any, and for other wants. Wherefore, if any priest leave a mission during the course of the year, he has not a right to his proportion of the yearly income until the amount justly due for expenses be deducted. In like manner, what he has provided for the use of the church from the income of the church—for example, wax candles, wine for the most holy Sacrifice, sacred furniture—these he should leave behind him, without any compensation, unless he can clearly show that the supply is excessive.

" (10) All are aware that there are now in operation different methods of raising money for the support of missions. The following in particular we do not disapprove of, till the charity of the faithful shall provide in a better way. They are: (*a*) Letting of seats or places in the church to certain persons or families at a fixed rent to be paid to the church. (*b*) Church collections made at the Offertory. (*c*) According to a custom prevailing generally in England, payment of a fixed sum, according to the part of the church which they occupy, by those who do not rent seats, yet are not content to occupy what is called the free space. (*d*) Sermons by some distinguished preacher of the word of God, after which the alms of the congregation, whose number is often swelled by a concourse of strangers, are collected for the general or particular use of the church or for some special purpose. (*e*) Collections which are either made from house to house, by persons appointed for the purpose, or by societies and confraternities lawfully appointed, or which are gathered from *tens* or *hundreds* as is done in the excellent society called the Society for the Propagation of the Faith, or contributions made by the more wealthy portion of the congregation at fixed times or yearly.

" (11) Although it is certainly much to be desired that many of these methods of maintaining the Church were done away with, yet experience has taught that it is as yet impossible altogether to dispense with them. Wherefore, in those places where one or more of these methods prevail, they ought to be so kept on that no innovations be introduced without the authority of the Bishop. Especially the free space should not be diminished nor narrowed without consulting him. But whatever money comes to the mission by these means, it should be considered as belonging not to the priest personally, but to the general wants of the mission. Therefore, whatever furniture, either sacred or domestic, he acquires from these sources, or whatever he expends in keeping in repair the church or other buildings in any way belonging to it, in this

expenditure he is not making provision for himself, but is providing for the mission from mission property.

" (12) As soon, therefore, as any priest enters on a mission, an inventory of all property belonging to the mission should be placed in his hands by the dean or by someone deputed by the Bishop. The missionary is bound to keep the furniture and buildings in good repair, yea, rather to improve them, that he may deliver to his successor as much at least as he received himself. Should he provide for the renewing of what is grown old and mean, or procure something new and more elegant to ornament the place, a distinction must be made as regards the sources from which the expense is defrayed. (*a*) If the priest has procured these things from his own property, or from the gifts of friends well disposed towards him, or in fine, from that portion of the income of the church which he might have expended on his own decent maintenance, they are to be considered as his own property, provided he has kept all that he received in good order. (*b*) But if these things were procured out of the general revenues of the church, or by gifts and collections from the congregation, or by money granted by the Bishop or the administrators of the temporalities of the diocese, they are to be deemed entirely the property of the mission, nor is it lawful for the priest on any account to claim them.

" (13) It is also to be generally understood according to a rule of canon law that things adapted for ecclesiastical purposes given to a missionary are, unless there is proof to the contrary, given to the mission; but things adapted for personal use are presumed to be given to the priest personally, as are also such church things as are given by a flock to a priest as tokens of gratitude or affection.

" (14) Retributions for Masses are the property of the priest. In like manner, where it is the custom, which is a very ancient one in England, of making presents to each priest at Easter and Christmas, these gifts of right belong to them. But the priest should be on his guard lest he incur the suspicion of avarice, by receiving anything on account of his administering the sacrament of Penance.

" (15) As to the application of money derived from stole fees, there is no uniform practice throughout the whole Church. For though the Church detests all filthy lucre in extorting or exacting money for the administration of the sacraments, yet the Council of Lateran, held under Innocent III in the year 1215, prescribed that the laudable customs in accordance with

which offerings were made by the faithful to the ministers of the altar, on occasion of the administration of the sacraments, should be observed. The proceeds derived from this source should be ordinarily considered as belonging to the priests; though they are distributed in different ways in different places. That distribution seems to be the best which is most conducive to alleviate the burthens of the mission.

" (16) Whilst, therefore, we forbid anything to be asked for and much more anything to be exacted before the celebration of baptism and matrimony, and even after the celebration as a right, we leave it to the prudence of Bishops to determine in their diocesan synods what seems best adapted to the customs and state of places. Especially should they most vigilantly correct all abuses, if any exist, as to the amount or to the exaction of these offerings, by enforcing everywhere an equitable arrangement."

These provisions seem to be in harmony with Canons 1182, 1519-1528, etc., of the new Code, and so it would seem that they are still in force.

CHAPTER IV

ON TITLE TO PROPERTY

TITLE is a cause sufficient to confer property in a thing. There are several kinds of title, some derived from the natural law, others due to positive law, and others which have their effect from the will of private persons. They may be reduced to title by occupation, by accession, by prescription, and by contract. On account of its importance and the abundance of material we will treat of contract in a separate Book; the other three titles must be considered here.

SECTION I

On Occupation

1. Occupation is the taking possession of some material thing with the intention of making it one's own. It will be a lawful title to ownership of property if the thing occupied had previously no owner, and actual possession is taken of it with the purpose of making it one's own. If these conditions be fulfilled, it seems useless to investigate further how occupation is capable of conferring property. Whether the fact of occupation sanctioned by the community is sufficient, or whether we say that by occupation a man's labour is mingled with the thing, and thus the connection of ownership is set up, is really immaterial. It is a title universally acknowledged and is derived from Nature herself.

As is clear from the definition, there cannot be occupation without actual, or at least constructive, taking possession of the thing, whether it be movable or immovable; it is not sufficient merely to see the thing at a distance, nor is it enough to take hold of it with the intention of seeing what it is, without any idea of retaining it for one's own.

Most things of value, especially the land, have owners already, and so a title to ownership by occupation can only arise with reference to certain classes of property which are not of very great importance. In moral theology this title is at the root of ownership derived from finding lost property, treasure-trove, and the capture of fish and wild animals.

Here English law only partially agrees with what seems safe in conscience.

2. The finding of things of value without an owner confers ownership in the things found if they be taken possession of with the intention of making them one's own. Whether they ever had an owner or not is immaterial in conscience, provided that they have none at present. English law, indeed, grants property which belonged to someone who died intestate and without heirs to the Crown, under the name of *bona vacantia*, and when such property is claimed by the Crown, its title of course prevails. If the Crown does not claim the property, the first who should occupy it would seem to be safe in conscience if he kept it. The same doctrine may be applied to wreck found, which positive law requires to be delivered to the receiver of the district, and this officer, if no owner appear within a year, sells the same and pays the proceeds into the Exchequer.

3. Any money, coin, gold, silver, plate, or bullion, found hidden in the earth or other private place, the owner thereof being unknown, is called treasure-trove. By English law it belongs to the Crown, but if the Crown does not claim it, the finder would be justified in keeping it.

4. One who finds property that has recently been lost may be bound in charity to take possession of it and try to discover the owner, but there is no obligation to do so in justice. If, however, he take possession of it, he is bound in justice to take reasonable care of it, and to use ordinary diligence to discover the true owner. On the true owner being discovered the finder has a right to be compensated for any expenses he has been put to in consequence of keeping the property, but he must deliver it up to the owner. As English law does not grant prescription in movables, this doctrine will hold even though the owner be discovered after the lapse of years; if the property still remains intact or in its equivalent, it belongs to the original owner and must be restored to him. The finder of lost property acquires thereby a qualified property in it which is valid against all save the true owner, and if the true owner cannot be discovered within a reasonable time, the title of the finder becomes absolute, and he may use it as his own.

5. Animals are either domestic, tamed, or wild. The property in domestic animals such as dogs, sheep, kine, pigs, always remain with the owner, however much they may stray, as long as they are not so utterly lost that there is no hope

of finding the owner. Such animals always belong to their original owner as long as he can assert his ownership over them, in the same way as his household furniture belongs to him. Wild animals which enjoy their natural liberty and go where they please belong as a general rule to him who first captures or kills them. Such a one makes them his own by occupation, for before he took them they belonged to no one. English law has modified this general rule to some extent, for if a trespasser capture or kill a wild animal on another person's land, it belongs to the owner of the soil on which it has been started and killed; if a trespasser start an animal on one person's property and kill it on another's, it belongs to the owner of the former. These rules of positive law give the owner of the property at least the right to vindicate his claim, which cannot then be lawfully resisted by the trespasser.

Animals which have been tamed, such as pigeons, bees, young pheasants that have been hatched under hens, belong to their owner as long as they retain the habit of returning to his premises, but if they lose that habit and recover their natural liberty, they belong to the first who takes them, like wild animals. Animals which are enclosed like deer in a park, rabbits in a warren, or fish in a pond, belong to the owner of the enclosure, as long as he can exert his control over them. If they recover their natural liberty, they are *primi occupantis.*

A poacher may be guilty of sin by damaging the property of another by trespassing on it, and from the fact that he exposes himself to grave personal risk or to the danger of violently resisting lawful authority if he is caught. By the mere fact of capturing wild animals he does not commit a sin against justice, unless he kills so many in a particular property that the right of killing game therein is seriously lessened in value, and the owner in consequence suffers considerable loss, because, for example, he cannot let it at so high a price.

Section II

On Accession

1. Accession is the increase of property either by natural production or by the union of one thing with another. When this takes place, legal and moral questions arise as to the owner of the increase. There are two leading maxims which settle such questions, *Res fructificat domino* and *Accessorium sequitur principale.* The maxim *Res fructificat domino* seems to follow necessarily from the nature of property and ownership, for he

who has the absolute ownership of something has a right to reap the benefit of all that it is, of all its activities, and of all that it produces. And so if the field is mine, I have a right to the grass, wood, or other commodity which it produces. If the tree is mine, I have a right to the fruit; if the mare is mine, I have a right to the foal; in the latter case the maxim *Partus sequitur ventrem* is also applied.

Jurists and theologians divide fruits into natural, industrial, mixed, and civil. Natural are such as grass, which grows without human labour and care; industrial are the product of industry, as a book or a new invention; mixed are partly natural, partly industrial, as a crop of wheat or potatoes; civil are such artificial fruits as rent from houses and land, interest from money lent. In all these cases the maxim may be applied, *Res fructificat domino.* In the case of mixed fruits, if the material belongs to the labourer the whole produce will belong to him; if the material, the field for example, belongs to someone else, then the owner of the field and the labourer whose labour aided in the production of the crop have each their right to a portion of the produce. Whether the crop be divided, or a money equivalent be paid to one or the other, is immaterial.

With regard to improvements made on land or in houses, the general rule is that, *Quidquid solo inaedificatur, plantatur, seritur, solo cedit.* However, first of all by custom, and in modern times by statute, an outgoing tenant has a right to compensation for the improvements he has made on his holding, provided that certain conditions have been fulfilled.

2. When one thing is added to another, the general rule is that what is accessory becomes the property of the owner of what is principal. And so the owner of land has the property in gradual increments made to it by alluvion; an island formed in a river belongs to the owner of the bed. If a river suddenly changes its course, or the sea suddenly retires, the rule does not hold; the ownership remaining as before. If wood belonging to another has been used in a building, the property is transferred to the owner of the building, with the obligation of making compensation for the wood. Similarly a painting on another's canvas belongs to the painter, but he must pay for the canvas. When a new form has been introduced into the material, as by baking bread, making wine or oil, the product belongs to the workman, but compensation must be made for the material. The ownership is then said to be acquired by specification. When liquids or solids belong-

ing to different owners have been mixed, they should be separated if possible, and each owner will retain his separate property. If this is impossible, the former owners still retain their right to a proportionate part of the whole or to its value.

SECTION III

On Prescription

1. As the term is used here in moral theology, prescription is a title by which the ownership of property is gained or lost through adverse possession during the time and in the manner laid down by law.

In English law the term prescription is only used with reference to incorporeal hereditaments—*i.e.*, rights and profits annexed to or issuing out of land. Of these the chief are advowsons, tithes, commons, ways, watercourses, lights, offices, dignities, franchises, pensions, annuities, and rents. Land and movables cannot be claimed by prescription. However, the Statute of Limitation, 3 & 4 William IV, c. 27, and the Real Property Limitation Act, 1874, have the same practical effect as Prescription Acts, with regard to real property, and it will be convenient to consider them here as such.

The mere possession of property belonging to another even for a lifetime would not of itself transfer the ownership to the possessor. But as it is so much easier to prove possession than ownership, and because those who have been in peaceful possession of property for a long time should not be liable to be unwarrantably disturbed, and, moreover, in order that owners of property may look after their rights, the legislature has authority to confer a right to property, in consideration of long and peaceable possession. This is what both ecclesiastical and civil laws of prescription do, and these laws avail not only in the external forum, but also in the forum of conscience.

2. In order that ownership of property may be transferred by prescription, certain conditions are requisite either from the nature of the case or by positive law. Theologians usually reckon five such conditions—viz.: (*a*) the property must be such as the law allows to be prescribed; (*b*) there must be good faith in him who prescribes; (*c*) consequently there must be some sort of title; (*d*) there must be possession (*e*) for the time required by law.

(*a*) As prescription depends for its validity on positive law, there can be no prescription which the law does not recognize. English law does not recognize any title to movables by pre-

scription, as we have already seen. Ecclesiastical law acknowledges a right of prescription to both movables and immovables. Inasmuch as laymen cannot hold benefices, they cannot gain a title to them by prescription, though clerics may do so.

(*b*) Good faith is the second condition required for prescription. English law does not expressly require good faith, but it is certainly required in conscience. He who prescribes must not know that the property which is in his possession belongs to someone else; if he knows this, he can never become its owner by prescription. This was defined by the Fourth Council of Lateran, c. 41, and the reason is plain.[1] For as soon as anyone is conscious that he has something which belongs to another, he is bound to restore it to the owner, and the longer he keeps it against the owner's will the more grievous sin of theft does he commit. Positive law could not by prescription transfer another's property to one who was in bad faith, for such a law would not be for the common good, but would foster crime. The user, then, by which property is acquired by prescription must be without the consciousness of wrongdoing; in one who frees his property from a servitude by prescription, there will be good faith if he put no obstacle in the way of the other's enjoying his right; he is not required to warn him that prescription is running against him. If during the time required for prescription a doubt about the right to the property occurs to the possessor, he must make all needful inquiries, and satisfy his conscience that at least no one else has a certain title to the property in question.

The time during which a predecessor in title held possession of the property may be reckoned together with the period during which the present possessor has held it in order to complete the time required for prescription, if possession was always held in good faith. Even if a predecessor in title was in bad faith, this will not prevent a successor from gaining a title by prescription, provided that the latter possesses the property in good faith for the full time required by law.

(*c*) Inasmuch as good faith is required, as we have seen, and this cannot exist without some colourable, supposed, or at least presumed title, the third condition requisite for prescription is some sort of title. The quality of the title affects the period of time required for prescription by ecclesiastical law, as we shall see; no special title is expressly required by English law.

[1] Can. 1512.

(*d*) No prescription can be had without uninterrupted, open, and peaceable possession. The prescription must be *nec vi, nec clam, nec precario.* It is precisely the possession for the period required that furnishes the ground for the transference of ownership by prescription. When the term is up the property is vested in the possessor, who acquires also a right to all the fruits, if any, which he has meantime reaped from the property; for what is accessory follows the principal.

(*e*) Different systems of law require different periods of time for prescription, and the time varies with different kinds of property.

A great change in the ecclesiastical law of prescription was made by the new Code, as is clear from Canon 1508, which is as follows: "The Church accepts for ecclesiastical property prescription as a mode of acquisition and of freeing one's self from burdens as it exists in the civil legislation of each nation respectively, with the exceptions laid down in the following canons." Canon 1509 exempts certain classes of property from prescription, Canon 1510 lays down that sacred things in the possession of private persons can be prescribed by private persons, but that sacred things which are not in the ownership of private persons can only be prescribed by a moral ecclesiastical person against another moral ecclesiastical person. In general one hundred years are required to prescribe against the Apostolic See, and thirty years are required to prescribe against other ecclesiastical moral persons, according to Canon 1511.

The term required by English law for the acquisition of rights by prescription varies according to circumstances. At common law, time immemorial was required to establish a prescriptive right, but the Prescription Act, 1832, provided that with respect to rights of common, and all other profits or benefits to be taken and enjoyed from or upon any land, where there shall have been an enjoyment of them by any person claiming right thereto without interruption for thirty years next before the commencement of any action upon the subject the prescriptive claim shall no longer be defeated by showing only that the enjoyment commenced at a period subsequent to the era of legal memory. It is also provided that the time during which the adverse party shall have been an infant, idiot, *non compos mentis*, or tenant for life, or during which any action as to the claim shall have been pending and diligently prosecuted, shall be excluded in the computation of the period of thirty years. But where there has been an

enjoyment for sixty years the claim is to be absolute and indefeasible.

Rights of way and other easements, or any watercourse, or the use of any water, to be enjoyed upon, over, or from any land or water, and also as to the access or use of light to and for any dwelling-house, workshop, or other building, are prescribed after twenty or at least forty years, instead of thirty and sixty respectively. An uninterrupted enjoyment of lights for twenty years constitutes an absolute and indefeasible right to them.

3. Prescriptive rights may be extinguished by abandonment, express or implied; and after a period of twenty years' non-use, or sometimes even after a shorter period, abandonment will regularly be presumed. They are also extinguished by operation of law when the dominant and servient tenements come into the possession of the same owner in fee.

As we have seen, the right to real property is by the Real Property Limitation Act, 1874, extinguished after twelve years' adverse possession. The Limitation Acts which affect the ownership of real property differ from other Limitation Acts which concern personal property or a right of action in that the latter only bar the remedy after the lapse of the time fixed by law; they do not take away the right; the former, on the contrary, extinguish the right.

The conditions for prescription in the United States are in general the same as in England, except that as a rule a period of twenty years is necessary and sufficient to acquire both land and incorporeal hereditaments, and also to extinguish those rights. In some States squatters who have cultivated plots of land in good faith may become owners of them by prescription in a shorter space of time than twenty years.

The subject of prescription is a thorny one in English law, and it would be imprudent for a confessor not otherwise specially skilled to venture to determine questions of right by prescription. What has been said will, it is hoped, enable him to judge how far conscience may follow the law, and when a penitent should be recommended to consult a lawyer.

DIVISION II

The Violation of Justice

CHAPTER I

ON INJURIES IN GENERAL

1. THE wide term *injustice* may be used to designate any violation of justice, whether it be legal, distributive, or commutative. Sins against legal justice are committed by doing anything against the common good of the society to which one belongs, or by neglecting to do what the common good requires to be performed. Such sins may be committed by rulers and by subjects, more frequently, however, by the former, inasmuch as the common good is specially entrusted to their care and guardianship. As the separate members of a society constitute that society, it is obvious that there is not a perfect and adequate distinction between a society and its members. In legal justice, therefore, which regulates the relations which ought to subsist between men and the society to which they belong, there is something wanting to the complete distinction of persons required in order that the obligations of strict justice may subsist between them. A violation, then, of legal justice is not a sin against justice in the strict and full sense.

Distributive justice prescribes that the ruler divide common burdens and emoluments among his subjects according to their capacity and merits. Before they are assigned to each one, no one has a strict right to any determinate share of them, and so a distribution of burdens and favours which is not according to merit is not against strict justice. A ruler who in his distribution of offices and burdens shows undue favour to some to the detriment of others' sins indeed against strict justice if he thereby cause damage to the community, for strict justice and the implicit agreement which he made on assuming his office forbid him to do that. If, however, no special injury accrues to the community through his showing undue preference for some of his subjects, he commits a sin which is called acceptation of persons, but he does not sin against strict justice. On the other hand, one who violates

particular or commutative justice deprives another of his strict right. Such a sin is called an *injury*, which may be defined to be the violation of the strict right of another against his reasonable will.

Such an injury is *formal* if it is committed knowingly and wilfully, otherwise it is *material.*

A *personal* injury is committed against rights which are intrinsic to the person, such as the right to life, liberty, good name, and honour. A *real* injury is committed against the property of another.

2. Personal injuries are treated of elsewhere under the Fifth and Eighth Commandments; here we consider more especially real injuries done to the property of another.

There are three different species of real injuries—robbery, theft, and simple damnification. Robbery, besides injury to property, includes also a personal injury, which consists in violence offered to another by forcibly depriving him of what is his. Simple damnification is the causing of damage to the property of another without taking away any of that property. Theft is the secret taking away of the property of another against his reasonable will.

3. No action is an injury unless it is against the reasonable will of the injured person, *scienti et volenti non fit injuria*, according to the twenty-seventh rule of law in the Sixth Book of the Decretals. The reason is obvious; because a person may as a rule renounce his rights, and then an action contrary to them ceases to be a violation of justice. It is no longer a depriving another of what is his; it has ceased to belong to him. There are, however, some rights which are inalienable, and actions against these will be contrary to justice even if the party wronged give his consent. No one can validly renounce his right to life, and so the private killing of another, even with his consent, except in lawful self-defence, is always murder. Similarly, marital rights of married people are inalienable, and, even if the husband consent, a wife's adultery is always adultery. The maxim, then, must be understood of rights which the owner can validly forego, and it asserts that no injury is done by acting against rights which the possessor with full knowledge and with perfect freedom does forego.

CHAPTER II

ON THEFT

1. THEFT, as we have seen, is the secret taking away of what belongs to another against his reasonable wish.

Not only the taking away, but also the keeping of what belongs to another against his reasonable wish is theft, as when a borrower fails to return what has been lent him on the day appointed, to the disappointment of the lender. Moreover, the use of, or any unlawful dealing with, the property of another against his wish is theft, as when a tramp makes himself at home for the night on another's premises, or when a passenger travels on the railway or tram without paying his fare.

In order that a sin of theft may be committed, the owner of the property must be unwilling that it should be thus dealt with by the thief; there is no theft committed by using another's property if the user knows that the owner would not object. Moreover, he must be reasonably unwilling, and so a man who is in danger of dying from starvation, or who is in extreme necessity of any other kind, may take or use what is necessary to save life, even if the owner be unwilling that he should do so. The reason of this is that, by the primary intention of our Creator and Lord, material things were created for the preservation of human life, and no rights of ownership can prevail against the higher claim of one who is in extreme necessity.

2. The sin of theft is of itself grievous, as is clear from the fact that it is against justice and charity; and St Paul classes it among the sins which shut the kingdom of heaven to the sinner.[1] However, like other sins of injustice, it is sometimes venial on account of light matter, and a practical question here arises as to when theft is a mortal sin, and when it is only venial. The same question is put in other words when we ask, What amount must be taken to constitute a mortal sin of theft?

3. Theologians are agreed that we must distinguish between the absolute sum, the taking of which is as a general rule

[1] 1 Cor. vi 10.

necessary and sufficient in all cases to constitute grave matter, and the relative sum, which will be sufficient for grave matter, regard being had to the loss of the owner. The general principle on which the quantity required for grave sins depends is the damage caused by the theft. For it is a grave sin to cause grave damage without a just reason; but in the case of very rich persons or companies we must consider not only the personal and particular damage done to them by theft of what belongs to them, but also the harm done to society. It may well be that a rich millionaire would not be appreciably worse off for the loss of a hundred pounds or of ten times that sum. The damage done to him by a thief taking a hundred pounds would be relatively less than if sixpence were taken from a day labourer. However, we must also consider the harm done by theft to the community and to the security of property. The malice of sin is not measured merely by the harm done to the individual; the harm done to society and other considerations also enter into the estimate. We must, then, besides considering the damage done to the owner of stolen money, weigh also the harm which theft does to society. And if grave harm is caused to society by stealing a certain sum of money, if the security of property would be seriously imperilled unless the theft of a certain sum were forbidden under pain of mortal sin, that sum will be the absolute quantity required for a mortal sin of theft. What the precise sum is must be left to the judgement of experts, who will consider all the circumstances of time and place, for, as values are perpetually changing, the sum required for a mortal sin of theft will also change. Under present circumstances, in civilized countries where similar conditions of commerce prevail, the common opinion of theologians fixes one pound sterling as the absolute sum required for a grave sin of theft. This will serve, therefore, as a measure of the gravity of theft from very rich people, or from companies with large resources.

However, a mortal sin of theft may be committed by stealing a much less sum than one pound if the theft cause great harm to the owner of what is stolen. The loss of a day's wage or of a sum which is sufficient for the support of a labourer and his family for a day, is a serious loss for a workman, and so, as the common opinion holds, the theft of such a sum from a labouring man is a grave sin. Something between this and the absolute sum will be grave matter if stolen from persons whose wealth is between the two extremes.

Matter which in itself is grave may become light on account

of special circumstances. Thus although grave necessity does not excuse theft, yet it may lessen the sin and cause to be venial what would otherwise be mortal. In the same way, less unwillingness on the part of the owner may lessen the sin. A father is less unwilling as a rule that a little of his money should be taken by a member of his family, especially if it is for a good purpose, than by a common thief. On this ground some divines say that in thefts from parents a double quantity is required for grave matter. Also when a number of small thefts are committed, which in the aggregate amount to grave matter, a larger sum is required for a mortal sin than when it is all taken at once. For the loss is not felt so keenly, and so the owner is not so unwilling.

4. That small thefts may coalesce and constitute grave matter is certain, for by a number of small thefts grave harm may be done, and the opposite opinion is implicitly condemned by the 38th proposition condemned by Innocent XI. Small thefts coalesce if the intention of the thief is to take a considerable sum, but for some special reason he takes it in small quantities at different times. Similarly, if a number conspire together to steal from another, they will all commit grave sin if grave damage be inflicted, even though each one only obtains a small sum. Also, when the proceeds of pilferings are hoarded, grave sin will be committed when grave matter is reached, or even if the proceeds be spent and do not coalesce by accession as in the preceding case, the different pilferings will coalesce and constitute one moral act of injustice if the interval be not notable—not over two months—as some theologians say. On the other hand, small thefts committed at wide intervals of time, and which do not coalesce on account of any of the reasons given above, do not constitute one moral act, and remain so many venial sins of theft.

The theft of something of small money value, but whose loss is very keenly felt for reasons of affection or association, will be a venial sin against justice, but a mortal sin against charity, if it was foreseen that its loss would cause very serious pain to the owner.

DIVISION III

On Restitution

CHAPTER I

ON RESTITUTION IN GENERAL

WHEN other sins have been committed they are blotted out and reparation as far as possible is made for them by sincere sorrow and repentance. But when commutative justice has been violated it is not sufficient to be sorry for the injustice done; reparation must be made for it by putting, as far as possible, the person injured in the same condition as he would have been if the injury had never been inflicted. This reparation for an injury that has been done to another is called restitution. There is a strict obligation in justice to make restitution as far as is possible to another whom one has injured; for justice requires that each one should have his own; but one who has been injured is deprived of his own so long as restitution has not been made; and so, in order that each one may have his own, in order that that equality may be preserved which justice prescribes, restitution is of strict obligation whenever commutative justice has been violated. It is an obligation of justice, and so it is a grave one, unless the matter be light.

As justice may be violated either by taking away from another what belongs to him, or by damaging or destroying his property, so we may consider restitution as being due either because one has what belongs to another, or because he has inflicted on him unjust damage and loss. These are called by theologians the *roots* of restitution. We will treat of them successively, and finally of the obligation of making restitution on account of co-operation in injustice.

CHAPTER II

THE FIRST ROOT OF RESTITUTION

THE first root of restitution is the possession of another person's property without any just title. This possession may hitherto have been in good faith without any suspicion that the property belonged to somebody else, or it may have been in bad faith with the knowledge that someone else was the rightful owner, or in doubtful faith with doubts about the ownership. The obligations of the possessor of another's property will be different in these three cases. We will treat of them in the three following sections:

SECTION I

Possession of Another's Property in Good Faith

1. When one discovers that he is in possession without any just title of what belongs to someone else, justice requires that he should restore it to the rightful owner, or at least give the owner warning so that he may remove it at his own expense. For justice requires that all should have their own, *res clamat domino*, and if one knowingly detains what belongs to another against the owner's reasonable wish he commits the sin of theft.

If the possessor of another's property consumed it while he was in good faith, and now when he finds out the truth, he neither has the property itself nor its equivalent, he is bound to nothing, *res perit domino*. The property no longer exists, and cannot be restored to its true owner; there was no fault committed by consuming what was supposed to belong to the consumer, so there is no obligation to make compensation to the owner for his loss. This is all the more true if the property was destroyed, or perished by accident, or in the ordinary course of nature.

2. If any natural or civil fruits, derived from the property of another, still remain after the possessor has found out that the property belonged to someone else, he must restore them to the owner of the property to whom they belong, for *res fructificat domino*.

Fruits of his own industry acquired on occasion of his possession of the property of another, he may keep, for the labourer has a right to the fruit of his toil.

Mixed fruits, which are partly due to industry, partly to the natural or artificial fertility of the property, belong partly to the labourer, partly to the owner of the property, according to what the law may prescribe, or according to the estimate of a prudent man.

3. The foregoing rules tell us what has to be done when one discovers that he has possession of the property of another, or when such property has perished while in his possession. But suppose that while he was in good faith the possessor of another's property, he sold it to someone else, and afterwards he finds out that it was not his to sell, what are his obligations in that case ?

No general answer can be given to this question; it will be necessary to distinguish according to several possible hypotheses.

The sale may have taken place in market overt, and then though the seller could not give a valid title to the property, yet the law does so. The Sale of Goods Act, 1893, sec. 22, makes the following provision: " Where goods are sold in market overt, according to the usage of the market, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of the seller."

According to Indermaur, " By sale in market overt is meant selling goods in open market as opposed to selling them privately. In the country the market-place or piece of ground set apart by custom for the sale of goods is in general the only open market there; but in London, and in other towns where so warranted by custom, a sale in an open shop of proper goods is equivalent to, and in fact amounts to, sale in market overt."[1]

In spite, however, of sale in market overt, " Where goods have been stolen and the offender is prosecuted to conviction, the property in the goods so stolen revests in the person who was the owner of the goods, or his personal representative, notwithstanding any intermediate dealing with them, whether by sale in market overt or otherwise."[2]

In this case " on conviction of an offence which involves larceny, the court, if the accused has sold the property to an

[1] *Principles of the Common Law*, p. 323, 6th ed.
[2] Sale of Goods Act, 1893, sec. 24.

innocent purchaser, on restitution of the property to the owner, may order the price paid by the purchaser to be repaid to him out of any money found on the convict when arrested. This provision is in addition to that allowing compensation to a person injured by a felony."[1]

If the sale did not take place in market overt, and the stolen property has not been restored to the true owner, the seller is bound to nothing in justice, according to a very probable opinion. For the property is no longer in his possession or under his control, so he cannot restore it to the owner; if he received money for it, he received it in good faith for value, and when he has mixed it with his other moneys it would seem that he makes it his own.[2] It would seem that this is in accordance with English law: " A mesne possessor acquiring the goods innocently from the thief, and reselling before conviction, is under no obligation in trover to the original owner."[3]

It was said above that the seller is bound to nothing in justice, but if without relatively serious inconvenience to himself he can, by giving the requisite information, procure the restoration of the property to its rightful owner, he will be bound to do this out of charity.

If the property was not sold in market overt, and if it has been restored to the rightful owner, the purchaser can demand back the purchase money from the seller, rescinding the contract for failure of warranty which is implied in every such sale: " In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is: (1) An implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass; (2) an implied warranty that the buyer shall have and enjoy quiet possession of the goods."[4]

These solutions would seem to be tenable whether the mesne possessor obtained the property in good faith by purchase or by gift, and whether he gained anything or not by selling it. For although one who possesses another's property either in itself or in its equivalent is bound to make restitution to the owner, a mesne possessor who has sold it in good faith to another no longer possesses it even in its equivalent, for the

[1] *Encyclopedia of Laws of England*, *s.v.* Stolen Goods.
[2] Stephen, 2, p. 60.
[3] *Encyclopedia of Laws of England*, *s.v.* Stolen Goods.
[4] Sale of Goods Act, 1893, sec. 12.

price after being mixed with his own moneys is not its equivalent; and although he is the richer by the transaction, yet it cannot be said that he is the richer unjustly, and so he is not bound to restitution.[1]

It is a disputed point among theologians whether a purchaser in good faith from a thief of stolen goods, on finding out that the goods were stolen, may return them to the seller if he cannot otherwise get back his money. It would seem that in conscience he may do so, for in so doing he does not wrong the rightful owner; he replaces the goods where he found them, so to say, and they are in no worse a position through having been for a time in his possession. He is justified in leaving them there if he cannot otherwise save himself from loss.[2] Such an action, however, might bring him into collision with the law of the country. In England it might amount to misprision of felony or be considered compounding a felony.

Section II

Possession of Another's Property in Bad Faith

1. When one has wrongfully had possession of another's property, well knowing that he had no right to keep it, on coming to a better frame of mind he is bound in the first place to restore the property itself to its rightful owner. Moreover, if the owner has suffered any special loss through being deprived of what belongs to him, the thief must make this good, inasmuch as he was the unjust cause of it. Furthermore, all natural or civil fruits of the property he must restore to the owner, for *res fructificat domino ;* and if they have been consumed, their value must be given to him or else he will not have his own. Any fruits which are due to the industry of the thief, and all necessary and useful expenses which he incurred in respect of the property, he may in conscience deduct from what must be restored to the owner, for justice only prescribes that each one should have his own, not more than his own.

2. If another's property is saved from fire, or from certain destruction in any other way, it still belongs to the former owner, for *res clamat domino.* At most, he who saved it has a claim to reasonable compensation for his trouble. If stolen goods perish in the hands of the thief, he must make restitution for them to the owner, unless they would have perished in the

[1] Bucceroni, 1, n. 1341. [2] St Alphonsus, 3, n. 569.

owner's hands at the same time and in the same way. For if they would have perished at the same time and in the same way, the thief is not the cause of their destruction: otherwise he is, and he must bear the consequences.

If stolen property had different values after the theft, the owner's losses must always be made good; and so if he intended to sell it when at its highest value, that value must be restored to him. Usually, however, if the property itself cannot be restored, it will be sufficient to restore the value which it had at the time of the theft. This is the teaching of many theologians and it seems to be in agreement with the provisions of English law: "The measure of damages in an action for conversion is the actual loss sustained by the wrongful act. In general, this would be the market value of the goods at the time of conversion. . . . And the jury on the trial of an action for conversion may also give damages in the nature of interest over and above the value of the goods converted."[1]

Section III

Possession of Property in Doubtful Faith

1. There is only question here of one who has well-grounded reasons for thinking that something in his possession belongs to another. We do not contemplate the case of one who merely suspects without solid reason that what he has belongs to someone else, much less the case of one who is ignorant of what title he has to his property. The doubtful faith of such a one as we are contemplating may date from a period subsequent to his obtaining possession of the property, or it may date from the time of his gaining possession of it; the possessor's obligations will be different as one or the other of these suppositions is verified.

2. When the possessor was at first in good faith but afterwards a doubt arose as to whether the property really belonged to him, inquiry must first of all be made to try and find out the true owner. Unless the possessor in doubtful faith does this, he exposes himself to the danger of keeping what does not belong to him, and thereby sins against justice. If he discovers the rightful owner, the doubt is solved; if after inquiry the question of ownership still remains doubtful, the possessor may keep the property and use it as his own, for *in dubio melior est conditio possidentis.*

[1] *Encyclopedia of Laws of England, s.v.* Conversion, Action of.

3. If the possession began in doubtful faith, and the property was taken from another's possession, injustice was committed, and the whole must be restored to the original possessor, for possession was in his favour.

If the property came into the hands of the doubtful possessor by sale or gift, or in some other lawful way, presumptions may sometimes be used to solve the doubt. Thus, even though we get a more than usually cheap bargain, we need not conclude that the seller is a thief, for *nemo malus praesumitur nisi probetur*.

If the doubt cannot thus be settled, nor the question of ownership cleared up by diligent inquiry, theologians commonly teach that the property must be divided according to the probabilities of the case. For one who began to possess in doubtful faith cannot claim the benefits of possession and keep the whole. He may, however, keep a portion corresponding to the degree of probability of his right of ownership. A few recent theologians, however, doubt whether this solution rests on solid grounds, for even the possessor in doubtful faith has at least the fact of possession in his favour, and, *ex hypothesi*, it is not certain that he is not the rightful owner; in fact, he has some claim to be considered the rightful owner. These theologians, therefore, would permit the possessor in doubtful faith to retain the property, provided that he be ready to surrender it to the rightful owner if and when he should appear.[1]

[1] Bucceroni, 1, n. 1354.

CHAPTER III

THE SECOND ROOT OF RESTITUTION

SECTION I

On Damnification in General

1. WHOEVER wilfully causes unjust damage to another, even though he himself obtained nothing by his unjust action, is bound to make restitution to him as far as he can. For he is the unjust cause why another has not what belongs to him, and in order that justice may be done he must cause the person damaged to be put as far as possible in the same condition as he was in before the damage was done. He must then make restitution not only for all the damage which he intentionally caused, but for all consequent losses as far as they were in general foreseen.

2. In order that such an obligation may be imposed, certain conditions must be fulfilled which it will be well to state more explicitly.

(*a*) The damage must be inflicted voluntarily, with knowledge and the will to do the wrong. For a man is only responsible in the forum of conscience for his free and voluntary actions. There must be theological fault, as theologians express it, otherwise there will be no obligation in conscience to make good any damage, at any rate before lawful sentence of a judge competent to impose such an obligation. For the law sometimes imposes the obligation of making good damage which has been done, even though it was not foreseen or intended. This is especially the case when there has been legal negligence or the omission of that diligence which the law requires in the circumstances. There are three degrees in this negligence: " *Ordinary* neglect has been defined to be the omission of that care which every man of common prudence, and capable of governing a family, takes of his own concerns; *gross* neglect is defined to be the want of that care which every man of common sense, however inattentive soever, takes of his own property; and *slight* neglect to be the omission of that diligence which very circumspect and thoughtful persons use

in securing their own goods and chattels."[1] In some cases the law punishes even slight neglect, in others ordinary, in others only gross neglect. The omission of that care which the law requires in the case is called juridical fault, and after sentence there will be an obligation in conscience to make good damage caused through juridical fault, for the laws prescribing this are just, inasmuch as they make men more careful and conduce to the public good.

If something has been done without foreseeing that it would cause damage to another, but this danger was noticed before the damage actually took place, there will be an obligation in justice for him who performed the action to prevent the damage as far as he can; if he does not do this, he will be bound to restitution. For as long as he can prevent the evil consequences of his action, this is under his control, and may, from the point of view of morals, be considered as continuing, and thus, unless he prevents the evil when he can do so, the agent is the voluntary cause of it. If, however, he cannot prevent the damage without relatively serious inconvenience to himself, there is just cause for excusing him. And so, if I inadvertently throw a lighted match on the ground, and then notice that it may probably cause a conflagration with loss to others, I am bound in justice to extinguish the light, otherwise I must repair the damage done.

If slight negligence caused slight damage to another, there will be an obligation of repairing it under pain of venial sin. If slight negligence caused serious loss to another, there is a difficulty as to whether before any judicial sentence there be an obligation to make restitution. Many theologians deny that there is, for no grave obligation can arise from a slight fault, and a light obligation has no proportion to serious matter; there cannot be a light obligation to avoid homicide, for example.[2]

(*b*) In order that there may be an obligation to make restitution for causing damage to another, the damage must be really and objectively unjust. If damage to another follows from the lawful exercise of my rights, I am not bound to make it good. If I dig a well in my property and thereby deprive my neighbour of his supply of water, I am not bound to make restitution for the damage. Similarly, I may sell a new machine or invention, though it may indirectly cause loss to many who had on sale machines of older pattern for which

[1] Chitty, *The Law of Contracts*, p. 412.
[2] St Alphonsus, 3, n. 552.

now there will be no market. I may lawfully use persuasion to induce a rich relative to leave his money to me, though others who would have had it thereby suffer loss. If, however, I make use of unjust means such as threats, violence, or calumny, and so prevent another from getting what he otherwise would have got, I commit a sin against justice and am bound to make restitution to the injured party. This is true even though he had no strict right to what he would have got, for at least he had a right not to be balked of his expectations by unjust means. And so in a competitive examination or concursus where something of value is the prize at stake, one who secures the prize by unjust means must make restitution to him who would otherwise have secured it. If there were no certainty of his securing it, restitution as far as possible must be made according to the degree of probability of his success.

(*c*) The unjust action must be the cause, not merely the occasion, of damage being done to another, in order that there may be an obligation of making restitution. For we are only responsible in justice for damage which we have caused. And so if I commit theft and others are induced to do the same by my bad example, I am indeed bound to make restitution for what I have stolen, and I commit a sin against charity by giving bad example to others; but probably at least, according to many theologians, I am not bound to make restitution for what others stole through my bad example. Similarly, I am not bound to make restitution for damage which was caused accidentally by my action, when there was antecedently no probable connection between my action and the damage caused. As, for example, if I lit a fire in my property, and there was no probable danger of its causing damage to my neighbour, I am not in conscience before judicial sentence bound to make good damage which it caused him on account of an unforeseen change in the direction of the wind. Some theologians would bind the man who lit the fire to restitution in this case if he hoped for the change of wind and intended the damage. They say that the wrongful intention supplies the want of physical causation and puts him under the obligation of making restitution. This opinion is probable, but the opposite also is probable, for although the evil intention makes the man guilty of affective injustice, he is not guilty of effective injustice, for his evil intention makes no difference in the physical sequence of cause and effect, and if he was not the cause of the damage prescinding from his evil intention, that evil intention could not make him the cause.

In the same way, if the theft of one servant is wrongly imputed to another, and this one is dismissed in consequence, the thief is not bound to make restitution to the injured man unless in some way he caused the false imputation.

One who is not sure whether any harm was caused by his action is not bound to make restitution, for a certain obligation cannot arise from an uncertain source. Whether there is any obligation of making restitution for damage which was certainly caused, but it is uncertain whether the author was A or B, is a disputed point among theologians. Many teach that there is an obligation on all the probable authors in common to make good the damage, and each will be bound to make good the whole in default of the rest. This is certainly true in case of conspiracy; but if each acted independently, and it is not certain which one caused the damage, it is hard if the burden of restitution is imposed on someone who perhaps did not cause the harm.[1]

If an incendiary intended to set fire to the house of A, and by mistake he destroyed the house of B, it would seem that he is bound to make restitution, for all the requisite conditions are present. His action was voluntary, really, and effectively unjust. Some theologians, however, deny that the obligation of making restitution can be imposed in such cases. For the injury should be formal, and they deny that it is formal in this case. He did not intend to injure B; it was purely by mistake that his house was burnt down. Some weight must be allowed to this opinion on account of the authority of those who maintain it, but it would seem to be over-subtle and against the common sense of mankind. The injury was formal, inasmuch as it was voluntary and knowingly unjust. This is sufficient to induce the obligation of making restitution; it is not necessary that the wrongdoer should intend to injure a definite person.

Section II

Particular Cases of Damnification

1. He who by fraud, violence, or other unjust means leads another to commit sin, or deprives him of any supernatural or natural good belonging to the soul and mind, is guilty of injustice, and is bound to make reparation to the injured party. If the same effect is produced by persuasion or other not unjust means, a sin of scandal is committed; but justice is not violated,

[1] Bucceroni, 1, n. 1369.

nor is there any obligation to make restitution. These principles are not only applicable to sin, but to vocation to the religious state and to sound doctrine, especially of the practical order.

Priests or masters, who by their office are bound to instruct others and teach them the truth, are in a special manner obliged to correct any false instruction which they may have given. Better leave people in ignorance than imbue their minds with falsehood.

2. There is a controversy among theologians as to whether there is an obligation apart from the just sentence of a judge for one who has injured another in one species of goods, as, for example, in his reputation, to make restitution to him in goods of another order, as, for example, in money. A competent judge may, of course, impose such an obligation according to the rules of equity; but apart from positive law the opinion which denies any strict obligation to do this seems the more probable. For if justice imposed such an obligation, equality would have to be secured between the injury inflicted and the compensation paid. This however, seems impossible in such a case, for there is no common measure of reputation and money. Moreover, however large a sum of money were paid in compensation for detraction, the reputation which had suffered would not thereby be restored. Justice, however, requires that what has been taken away should be restored, not something else.

3. When one has injured another's reputation by slander or detraction, he is under a grave obligation in serious matters to restore his neighbour's good name as far as he is able, and to make reparation for all other damage which the injured party has suffered in consequence of the slander or detraction. If he has lost his position or money, restitution of these must be made as far as possible. We saw above that more probably the detractor is not bound to pay money precisely in compensation for the injured reputation, unless condemned to do so by competent authority. The mode of restoring the injured reputation of another will vary according to circumstances. If no other way presents itself, the slanderer must say that he spoke falsely, for the reputation of the innocent is of more consequence than that of the guilty. A detractor who has injured the good name of another by making known his secret sin, cannot, of course, say that he spoke falsely, but he must do what he can in some other way towards the desired end. There will be no obligation to do anything if the calumny or

detraction has been forgotten, or if the injured party has lost his reputation in some other way, or if the injured party prefers that the matter should not be reopened, or if it is physically or morally impossible now to do anything towards restoring his good name.

4. One who has unjustly wounded another, according to the more probable opinion, as we have seen, is not bound to make compensation in money for the wounding or mutilation. He is, however, bound to make restitution for all expenses to which his action has subjected the injured man, and for all other money losses which followed in consequence of loss of work, position, etc., and which were in some way foreseen by the wrongdoer. If the injured man dies, restitution must be made to his heirs or legatees for all the expenses he was put to or the losses he suffered on account of the unjust action. If, in consequence of the injury inflicted, the injured man cannot provide for wife, children, or parents, or if death ensued, the wrongdoer will be obliged to provide at least what is necessary for their support. For these had a right not to be deprived of their support by the unjust action of the wrongdoer. There are no necessary heirs according to English law, and it is a controverted point whether restitution is due to other heirs, relatives, or creditors who have suffered damage from the injury inflicted. It is probable that inasmuch as injury to such people is not necessarily connected with unjust wounding or homicide, and only follows from it in a remote and accidental manner, there is no obligation to make compensation to others besides the above-mentioned.[1]

Whether the injured man can release the wrongdoer from the obligation of providing for his family who are dependent on him is a disputed point among divines. Many approved theologians hold the affirmative on the ground that the family acquire their right to compensation through the injured man, who therefore can release the wrongdoer from all obligation to make restitution. This opinion is certainly probable, and so in case of a duel where both parties have freely consented to fight, and therefore freely accept the consequences of their action, there will be no strict obligation for the victor to make any compensation for wounding or killing his adversary.

5. *Scienti et volenti non fit injuria ;* and so if a woman suffers loss of reputation, position, or money, in consequence of fornication freely committed, no restitution will be of strict obligation. Even for criminal assault or rape no restitution

[1] Lugo, disp. 11. n. 77.

in money is of obligation to compensate precisely for the loss of virginity. But the man who has been guilty of this crime must make restitution for other losses, and either by marrying the woman wronged or by providing her with a dowry, he must, as far as possible, put her in the position in which she would have been if he had not wronged her.

6. No money compensation is of obligation on account of adultery when no child has been born of the adulterous intercourse. If a child has been born, and loss ensues to the husband who is compelled to support a child which is not his, or to the family because one who has no right comes in for a share of the inheritance, compensation must be made by the guilty parties. Great difficulties would arise if an adulterous wife made known her crime to her husband, so she is not bound to do this; nor is a child bound to believe the sole assertion of his mother that he is illegitimate. Compensation must be made in other ways as far as possible. In practice, however, if husband and wife are living together, it will rarely be certain whether a child that is born is the fruit of adultery or not, and the presumption is that it is legitimate. If they are not living together, the adultery will be patent to the husband, and if he consents to support the child and treat it as his own, the obligation of the adulterer will cease.

CHAPTER IV

ON CO-OPERATION IN INJUSTICE

THE question of restitution is complicated and beset with special difficulties when there are more agents of injustice working together than one. There will, indeed, be the same roots of restitution which we treated of above, but difficulties arise as to who among the co-operators is bound to make restitution, and who is primarily bound. One may help another, or co-operate with another, in inflicting an injury in various ways. Nine ways are commonly enumerated: by counsel, by command, by consent, by provocation, by praise or flattery, by being partner in the sin, by silence, by concealment, by defending the ill done. In the first six of these ways the co-operation is positive, in the last three it is negative. Something must be said about each (*cf.* Can. 2209).

1. One co-operates with another in injustice by counsel when, by giving advice or by urging motives, or by showing how it may be done, he causes that other to commit an act of injustice. Such a one is obviously the moral cause of the injury, and all the conditions required for imposing an obligation of making restitution are present. If the principal agent was already determined to commit the injury, this will in that case not be due to the counsellor, and he will not be bound to repair it. Nor will the counsellor be bound to make reparation to the principal agent for any loss which the latter suffered in consequence of inflicting the injury, unless he induced him to act by fraud or other unjust means. Moreover, if before the injustice was committed the counsellor efficaciously withdrew his advice, and proposed equally strong motives for desisting from the act, it would seem that he cannot be obliged to make restitution. If, however, he had showed the other how to commit the crime and thus made it possible, he must take means to prevent it being committed, otherwise he will be responsible. Confessors, lawyers, doctors, and others whose expert advice is asked are under a special obligation not to give advice which is injurious to their clients or to third parties. If they do this, they will be bound to make compensation to the injured party not only when they acted

maliciously, but also when they gave injurious advice through gravely culpable ignorance or precipitancy. Others who do not specially hold themselves out as experts will not be bound to compensate those who ask their advice and suffer loss through following it. No injury was done by giving them what they asked for, no fraud was committed by the assumption of skill or knowledge which was not possessed; if they chose to follow the advice, they took the risk on themselves, and *scienti et volenti non fit injuria.*

He who follows unjust advice acts in his own behalf and in his own name, and so is the principal cause of the injury done. He is bound in the first place to make restitution, and if he fail to do so, the counsellor is bound.

2. We co-operate in injustice by command when by whatever means we induce another to do an injury in our name and on our behalf. It does not matter whether one of the parties is in a position of superiority with respect to the other or not, nor by what means he induces the other to perform the injurious action, whether by threats, or promises, or commands, or requests; it is sufficient if by any means he induces the other to do his unjust will. Henry II made himself guilty of the blood of St Thomas à Becket by complaining that none who ate his bread would avenge the insults offered him. Mere approval, however, of injustice which has already been done does not render him who approves liable to make restitution.

One who by command induces another to commit an injury is bound in the first place to make reparation for the injury and for all the damage which was the necessary consequence. In his default the instrument of his injustice is bound to make restitution. The one who gave the command is not bound to compensate his agent for loss or damage which he suffers in executing the will of his principal, unless compulsion or other unjust means were used to procure his co-operation. Nor is he bound to make restitution for damage which his agent did in excess of the instructions given. Furthermore, if before the command is executed he recalls it and the recall is notified to the agent, he will not be responsible for what the agent may do on his own authority; he will be responsible, however, if by any chance the intimation that the command is recalled does not reach the agent.

3. One who co-operates in injustice by giving his consent or vote that the unjust action should be done is bound to make reparation if his consent was the moral cause of the injustice. And so members of legislative bodies who agree

together to pass an unjust law are jointly and severally bound to make reparation for all the harm that the law does. Jurymen, too, whose vote is necessary for an unjust verdict are all responsible for the injustice if they give the verdict. Sometimes, however, when injury is inflicted by the unjust votes of many, the obligation of making restitution will depend on the manner of voting. If all acted conjointly, giving their votes in a body, each and all will be responsible for the harm done; if, however, the voting took place successively, those who voted first and whose votes were necessary and sufficient for passing the unjust measure will indeed be bound to make restitution; but those who voted subsequently, and whose votes were not required to make the measure law, may be excused from the obligation of making reparation except in the case of conspiracy, though they, too, sin against justice. Those who give an unjust vote when it is the only means of preventing a greater evil do not do wrong, and are not bound to make restitution. When one of two evils is necessary, we may lawfully choose the less.

4. Whoever by provocation or ridicule, or by praise or flattery, causes another to commit an injury, or is the cause why reparation is not made for injustice committed, is himself bound to make restitution in the same way as one who is the cause of injustice by counsel.

5. One may be a partner in the infliction of injuries in various ways. He who helps another to perform an unjust action is a partner in injustice in the strict sense. One, however, who receives stolen goods or affords protection to a wrongdoer, and so encourages him in committing injustice, is also a partner in his sin. A receiver of stolen goods is obviously bound to restore them to their owner, and if by holding himself out as ready to receive them, or by affording protection to the thief, he is the cause of injustice being committed, he will be responsible for that too. To what extent the partner in injustice is bound to make restitution will depend on circumstances. He will be responsible for the whole damage inflicted if it could not have been inflicted without his help, or if the partners conspired together to commit injustice. Otherwise it will be sufficient to make reparation for such part of the damage as each respectively caused, in the estimation of a prudent person.

When treating of charity we saw that it was never lawful to co-operate formally in another's sin, but that according to the principle of a double effect it is sometimes allowed to co-operate

materially in the sin of another. This doctrine may be applied to the matter before us, and so though it is never lawful to help another to do what is always and intrinsically wrong, as to kill an innocent person, yet in other cases it is not sinful to co-operate materially with the unjust action of another. A servant who is threatened with instant death unless she gives up a key to a robber, or shows where her master's money is kept, would act heroically if she died rather than betray her trust; she would not commit sin if she preferred her own life to her master's property.

6. On account of one's office, or in virtue of a special contract, there is sometimes a special obligation to prevent injury being done to others, and if the obligation be not fulfilled, there is negative co-operation in the injury inflicted. Apart from such special office or contract we are bound in charity to prevent injury to others as far as we can, but not in justice. This negative co-operation may be committed by concealment of injustice which has been done, as when a servant conceals thefts committed against his master's property which has been entrusted to his care. It may be committed by silence, as when a policeman accepts hush money to say nothing about a robbery. It may also be committed if one whose duty it is to protect another's rights or property neglects that duty and allows them to be injured. On account of defence of an unjust act which has already been done there will not arise an obligation to make restitution, unless such defence was the cause why restitution was not made for the crime defended. All approbation and defence of wrongdoing is nevertheless sinful. One who culpably neglects to prevent his animals from doing harm to his neighbour is bound to make restitution.

Sometimes these negative co-operators are excused from performing their strict duty on account of the very serious inconvenience to which it would subject them, and which they are not presumed to have obliged themselves to undergo. In such cases they will be excused from making restitution for injuries which they did not prevent.

CHAPTER V

THE CIRCUMSTANCES OF RESTITUTION

IN this chapter we will treat of certain questions concerning the circumstances of restitution, as, to whom restitution is to be made, how much, in what order, in what manner, at what time and place.

SECTION I

To whom Restitution is to be Made

1. Restitution is compensation for an injury inflicted, and so in general it must be made to him who suffered the injury. This will in general be the lawful possessor of the property taken or damaged, to whom, therefore, restitution must be made if he is known for certain. If the property was taken from a child, or from a servant who merely held it for his master, it may be restored to the father of the child or to the master. If it belonged to a corporation, it should be restored to those who administer its affairs.

2. In case of doubt as to whom the property belongs, diligent inquiry should be made, and if the doubt cannot be resolved, the property should be divided among those who are the probable owners if they are few in number. If they are many and uncertain, restitution may be made to the poor or to religious purposes of the place where the injury was committed, for the true owners may in the circumstances be presumed to wish that this should be done. If the property cannot well be devoted to local charitable or religious purposes, it may be spent elsewhere on such causes. When shopkeepers and others are bound to restitution for defrauding their customers, the persons injured are not altogether unknown, and restitution can best be made by restoring to future customers what has been unjustly taken away.

3. If the true owner is altogether unknown and cannot be discovered, property which has been obtained without injustice may be retained and treated as property found, in which the finder has a qualified ownership.

If the property was obtained through wrongdoing, it must be surrendered, the common good requiring that nobody should benefit by his own theft or fraud. Theologians are practically agreed on this, and that restitution must be made to the poor or to religious purposes; but when they inquire further into the reason for the doctrine they are divided in opinion. Some maintain that it is grounded on the positive law of the Church which expressly provided that what has been unjustly obtained by usury or simony must be given to the poor or to pious causes, and the same decision has been extended to similar cases. On this ground they explain the action of the Church, which sometimes grants compositions for just cause to debtors whose creditors are uncertain. Other theologians with greater probability teach that the doctrine rests on natural law, which the Popes interpreted and applied to gains made by usury and simony. For natural law requires that nobody should benefit by his own wrongdoing, so that restitution must always he made of ill-gotten goods. If restitution cannot be made to the individual owners, partly by interpreting their personal wish, partly because if the property is usefully expended on the poor in their behalf they will benefit spiritually by it, partly because inasmuch as the community is wronged by theft, restitution must be made to the community, and this is done by choosing the poor or religious objects; the obligation is satisfied by restoring to these.

Section II

How Much is to be Restored

1. We have already seen what must be restored in the case of one who is in possession of another's property, or in case of unjust damnification to another. In general, the damage inflicted is the measure of the restitution to be made, for justice requires that the owner should have back his own. When there were several who co-operated in injustice a special difficulty arises as to whether each and all are jointly or severally bound to make restitution. If two thieves assist each other to break into and rob a house, what are the obligations of each of them with respect to the restitution to be made ?

2. In such cases as this each must, of course, make restitution for the harm which he personally and immediately caused. If each one takes his share and makes reparation for that

portion of the injustice which he committed, the whole damage will be repaired. But sometimes some of the partners of injustice are unable or unwilling to make restitution for their share in the unjust act; the question then arises whether the rest are bound to make good the whole damage inflicted.

Each and all will jointly and severally be bound to make reparation for the whole damage, or *in solidum*, as divines say, when each and all were jointly and severally the efficacious moral or physical cause of the whole damage; for we are bound to make reparation for the damage which we have caused, and for that alone. This will be the case under the following circumstances:

(*a*) When the action of each and all is the necessary and sufficient cause of the whole damage. This condition is fulfilled when one commands or counsels an unjust act and another in consequence performs it.

(*b*) When the action of each is sufficient to cause the damage, and it has an actual effect in producing it, though the effect would have been produced without it. Thus if two men inflict fatal wounds on another, each is responsible for his death and all losses necessarily connected with it. In the same way, when several conspire together to commit an injury, and mutually encourage and assist each other to inflict it, all are bound jointly and severally to make restitution.

(*c*) When the action of each is necessary for the production of the effect, so that it could not be produced without it, though the action of each would not be sufficient by itself, all are bound jointly and severally to repair the injury. Thus if two thieves carry off a safe which they could not carry alone, each in the other's default must make good the whole damage.

When several acting together, but without mutual conspiracy in the strict sense, inflict injury on another, divines are not agreed as to whether each and all are bound to make reparation for the whole damage. Each is certainly bound to repair the damage due to his personal action, but probably be may be excused from restoring more than is equivalent to the damage which he actually caused. Thus, though those responsible for an unjust war are bound to make compensation for all the unjust damage which it causes, yet the private soldiers are only bound to make restitution for the damage which they personally cause. In the same way, if a crowd

damage the property of an obnoxious political opponent, individuals who formed the crowd will only be obliged to make good the damage which they severally caused. Similarly, if injustice be done by picketing in a strike, the leaders will be bound to make reparation for all the injuries inflicted; the men who take part in it may be excused if they contribute their quota.

Section III

Order of Making Restitution

1. When several have co-operated in some act of injustice for which they are bound to make restitution there may be question as to who is primarily bound, and whether the others are excused if he repairs the damage. The answer to such questions will be clear from what follows.

When those who co-operated in injustice are only bound to restore ratably, no order need be observed among them. Each must fulfil his obligation independently of the others and restore his share. Even if they are bound jointly and severally to make restitution, but all co-operated in the unjust act in the same way—as, *e.g.*, by conspiracy and mutual help—the question of order will not arise. Each and all are bound to restore their quota, and in default of any, the rest are equally bound to indemnify the injured person. If this has been done, those who indemnified the injured party will have a claim against the defaulters.

2. If, however, those who are guilty of an injustice in common co-operated in it in different ways and degrees, so that, for example, one gave the command, others executed it, and others who were bound to prevent it neglected to do so, then it is plain that all are not equally primary causes of the injustice, nor are all equally bound to make restitution. In such cases the co-operators are bound to make restitution in the following order: (*a*) If anyone has the property of the injured person he must restore it, for *res clamat domino*. (*b*) One who co-operates by command is the principal cause of the injury; the rest merely act in his name and for his advantage, so that he is primarily bound to make good the damage done. (*c*) Thirdly, those who inflicted the damage will be bound to make it good. (*d*) Then others who co-operated positively by advice, consent, or flattery, will be bound. (*e*) Finally, those who co-operated negatively.

If the primary causes of the injustice make restitution, the rest will be free, whereas if the secondary causes who merely acted for others restore to the injured party, the primary causes will thereafter be bound to make restitution to them.

3. The question of order of payment among creditors also arises when a debtor is insolvent and cannot pay all in full, for if he can pay all in full, order of payment is not of consequence. If a man cannot pay his debts as they become due, he will be adjudicated a bankrupt, and his property will in general be divided ratably among his creditors. Some debts, however, have priority according to English law, and must be paid in full if the assets are sufficient for the purpose; otherwise they will abate equally among themselves. "These are (1) Rates and taxes. . . . (2) The wages or salary of any clerk or servant, not exceeding £50, in respect of services rendered during four months prior to the receiving order. (3) Wages of any labourer or workman, not exceeding £25, for services, whether time or piece work, rendered during two months prior to the date of the receiving order."[1]

"A secured creditor has four courses open to him: (1) He may rest on his security and not prove. (2) He may realize his security and prove for the deficiency. (3) He may value his security and prove for the deficiency, after deduction of the assessed value. (4) He may surrender his security and prove for the whole debt."[2]

The debts of a person lately deceased must be paid by the executor or administrator in the following order: "First, the funeral expenses; next, the expenses of probate or taking out administration, including the costs of an administration action and other executorship expenses; and then the debts of the deceased are payable out of legal assets in the following order: (*a*) Crown debts due by matter of record, a surety to the Crown having the like priority; (*b*) debts having priority by statute—*e.g.*, under the Friendly Societies Act, 1896, sec. 35; (*c*) debts of record consisting of judgements in courts of record and recognizances; (*d*) debts by specialty and simple contract."[3]

If, however, the deceased died insolvent, on the petition of one or more of his creditors, whose debt would have been sufficient to support a bankruptcy petition against him if he

[1] *Encyclopedia of Laws*, *s.v.* Bankruptcy.
[2] *Ibid.*
[3] *Ibid.*, *s.v.* Executors and Administrators.

had been alive, his property will be administered as in bankruptcy according to English law.

If a debtor makes a payment of money or a delivery of property to a creditor not in the ordinary way of business and without any pressure or demand on the part of the creditor, knowing that his circumstances are such that bankruptcy will be the probable result, he is guilty of a fraudulent preference in English law. Such fraudulent preference is void against the trustee in bankruptcy, if made within three months before the bankruptcy petition is presented. There is a similar provision in American bankruptcy law, but the period is four months instead of three.

Those who are on the verge of bankruptcy should not, of course, give such preferences to any of their creditors merely with the intention of favouring them at the expense of other creditors. If they cannot pay their debts in full, the claims of justice are the same for all, and all creditors should share alike. If such a preference has been given, the property must, of course, be surrendered to the official receiver or trustee on his demand. But supposing that he does not come to the knowledge of it, and makes no demand for it, is the preferred creditor bound to surrender the property of his own accord? There would seem to be no obligation in conscience to do so. He has only received payment of what was due to him, as we suppose; he might have demanded payment, and then the insolvent debtor might lawfully have paid it. No valid reason can be urged to show that in accepting full payment of his debt before the debtor's bankruptcy the preferred creditor commits an act of injustice against the other creditors. If he does not commit an act of injustice against them, he is not bound to make restitution to them. At least, this opinion would seem not to be destitute of all probability in its favour.

Section IV

The Manner of Making Restitution

1. In the internal forum of conscience it is sufficient to indemnify the injured person for the injury which he has suffered, and in whatever way this is done conscience will be satisfied. Restitution, then, may be made by one's self or through another, with or without the knowledge of the injured party, under the guise of a gift, or by extra work in the case

of a servant, or greater diligence than is otherwise of strict obligation. If the form of a gift or present is chosen, and the donee makes a present in return, this may not be accepted if the principal motive for making it was to make a return for the present received, otherwise it may be retained when the receiving of the present was rather the occasion than the cause of the return being made.

2. In English law payment through the post is not a valid discharge of a debt unless the creditor expressly or by implication designated that method of payment. However, in conscience, it would seem that a possessor in good faith of another's property is released from all further obligation if he choose means for making restitution which are ordinarily safe and secure. He is only bound to use ordinary care and diligence in restoring the property, nor is he bound to do this at his own expense.

According to the common opinion of theologians, one who possesses another's property in bad faith must see that the property is again put into the possession of its true owner, so that if he send it by post and it is lost, he is still bound to make restitution, unless the means chosen were expressly designated by the owner. However, there is a good opinion which excuses even the possessor in bad faith from further obligation if he took ordinarily secure means to restore the property to its rightful owner. The creditor may be presumed to consent that such means as the post or the confessor should be chosen for making restitution, and if the property is lost, *perit domino*.

The possessor of another man's property in bad faith must restore it to the owner at his own expense. If the individual property cannot be restored without very great expense, restitution may be made in money with the presumed consent of the owner.

Section V

The Time and Place of Making Restitution

When an obligation of making restitution arises from contract, the terms of the contract must be observed with regard to time and place. Otherwise, in general, restitution must be made as soon as possible, and the unjust possessor of another's property will be responsible for all loss arising from even inculpable delay, as far as such loss could be foreseen. He became responsible for such loss when he took unjust posses-

sion of his neighbour's property. He must, moreover, at his own expense, as we have seen, take means to put the owner in possession of his property again. The possessor of another's property in good faith must not delay restitution unreasonably, but he is not responsible for unavoidable delay, nor is he bound to bear the expenses of making restitution.

CHAPTER VI

CAUSES WHICH EXCUSE FROM RESTITUTION

1. ONE who is *per se* bound to make restitution may sometimes be excused from doing so for special reasons, either entirely or at any rate for a time. It is plain that if the owner does not expect or wish restitution to be made, although he was unwilling to be injured, the obligation will cease. A rich father may be unwilling that his son should take from him a sum of money without his permission, but after it has been done he may not care to exact restitution. Similarly, a wealthy man would be very angry if a neighbour took one of his horses out of the stable and used it for a day's work; he might demand an apology, but he probably would not take any money compensation; he does not keep livery stables.

2. Physical or moral incapacity to make restitution will be a valid excuse as long as it lasts. If a man has no means, or if he cannot make restitution without reducing himself to beggary, it will be sufficient if he have the wish and intention to restore when he is able to do so. Sometimes it may be possible for one who has stolen a large sum which he cannot at once repay to lay by a little at a time and thus by degrees save the amount required. If this can reasonably be done, it will be of obligation. It would be unreasonable to expect a man to make restitution when it could not be done without costing a great deal more than the object restored was worth, or when restitution of a sum of money would lead to loss of reputation, position, and future prospects. If in such cases means exist for making secret restitution, they should of course be adopted.

When a man becomes bankrupt all his property, with the exception of the tools of his trade and the necessary wearing apparel and bedding for himself, wife, and children, to the value of £20, will vest in the official receiver and trustee. These officials will also be able to claim for the benefit of the creditors future acquisitions of property until the bankrupt has obtained his discharge. The question arises whether after a bankrupt has obtained an absolute discharge he is still liable in conscience to pay any residue that remains of his debts,

or whether he is free in conscience as he is in law. There can scarcely be a doubt that the civil authority can release a bankrupt from all future liability if it choose to do so. Especially in trading communities it may be for the public good that an honest but unfortunate trader should be able to begin again, without being weighted with a heavy load of past debts. If the law releases a bankrupt debtor from all future liability, the rate of interest will soon accommodate itself to the circumstance. So that it is merely a question of fact as to what is the effect of any particular bankruptcy law. In most countries, as in America, it seems that the law only grants the bankrupt legal exemption from future molestation on the part of his creditors; it does not free him from the moral obligation to pay his debts in full if ever he becomes able to do so.

In England, on the other hand, by an absolute discharge "the debt is extinguished," "the bankrupt becomes a clear man again," in the words of lawyers who discuss the effect of English bankruptcy law. A composition or scheme of arrangement with one's creditors has the same effect as an absolute discharge when it has been approved by the Court.

CHAPTER VII

ON OCCULT COMPENSATION

1. WHAT another owes me in justice I have a right to have, and if he refuses to give it to me, I may compel him by having recourse to law. Sometimes, however, this means of enforcing my rights is uncertain, costly, and accompanied by great inconvenience. Under certain conditions I shall be safe in conscience if I covertly take what belongs to me. If I do this, I only take my own; I only defend myself from a continual injustice which was being inflicted on me by one who detained my property against my reasonable will.

2. Such an act of occult compensation, as theologians call it, may be allowed in conscience on four conditions:

(*a*) The debt must be morally certain. If I have only a probable right, I may have recourse to the law to have the question decided, but with only a probability on my side I must not deprive another of what he possesses with a probable right on his side. In such a case, *melior est conditio possidentis*.

(*b*) There must be a difficulty in vindicating my right by ordinary legal process. For if there be no difficulty, I must not take the law into my own hands; public order and peace require that. Even though from occult compensation there be no fear of a breach of the peace, yet no man is a safe judge in his own case.

(*c*) I must not secretly take what belongs to me when there is likelihood of being paid after all. By so doing I should wrong my debtor and be paid twice.

(*d*) I must take compensation in the same kind of property as far as possible; the debtor must not be forced to sell or barter his property against his will. Of these conditions the first is the most important, but all should be loyally and conscientiously observed in those special cases when we may have recourse to occult compensation.

PART VIII

THE EIGHTH COMMANDMENT

THE Eighth Commandment of the Decalogue is, " Thou shalt not bear false witness against thy neighbour."[1] Primarily it forbids the giving of false evidence, especially in a court of justice, against one's neighbour, by which his reputation is unjustly injured. But because the same effect is produced by rash judgements, calumny, tale-bearing, backbiting, contumely, lying, and the betrayal of secrets, all these sins are also forbidden by this commandment. Inasmuch as it is virtually positive, it prescribes the telling of the truth.

CHAPTER I

ON RASH JUDGEMENTS

1. A JUDGEMENT is a firm assent of the mind to a proposition without fear of mistake, and if such an assent is given without sufficient grounds it is a rash judgement. The term, however, is used here only of judgements without sufficient reasons against the character of others, as that such a one is wicked, untrustworthy, a drunkard, and so on.

2. Such rash judgements, when they are formed deliberately with the consciousness that there is not sufficient ground for them, are sinful, and if the matter be serious they are gravely sinful. The reason is because all have a right to our good esteem unless they have forfeited it by their bad conduct; in judging others rashly we arrogate to ourselves an authority which we do not possess, and we use it unjustly against the character of our neighbour.[2] We thus violate justice, which in serious matters binds under grave sin.

3. Rash judgements, however, to which depraved human nature is so prone, are not usually grave sins in those who are striving to lead good lives. Rash and evil doubts, or suspicions, or opinions about others are frequent, but these, although wrong, are not as a rule gravely sinful, for they do not inflict serious harm on our neighbour's reputation.

[1] Exod. xx. 16. [2] Jas. iv 13.

4. It is no sin to think that another is wicked or has committed a sin if we know it to be a fact. Nor are we obliged to think that all men are good until we know something to the contrary. We may suspend our judgement about such as we do not know sufficiently well to be able to say whether they are good or bad. We know, moreover, that there are many bad people in the world, and prudence suggests that we should be on our guard against all whom we do not know well, though justice and charity incline us to think no evil of anyone.

Rash judgements frequently arise from the malice of our own hearts, or from hatred and envy.[1] If we purify our own hearts from vice and wickedness, we shall think kindlier thoughts of others.

[1] Rom. ii 1.

CHAPTER II

ON DETRACTION

1. DETRACTION, slander, or backbiting is committed by unjustly depriving another of his good name in his absence. If this is done by falsely imputing to him something which injures his reputation it is called calumny. Tale-bearing is a similar sin, and consists in making mischief between friends by telling tales to the disadvantage of one of them. All these are sins against justice and charity, for they tend to deprive our neighbour of his good name, " which is better than great riches," and to which he has a strict right until he forfeits it by his public conduct. Even if what is said to the disadvantage of our neighbour be true, we have no right to make it known to his discredit, as long as it is not public, for he still retains his reputation, he still has a right to it, and he must not be deprived of it without just cause. Even the dead retain their right to their good name, for death does not make them non-existent, and men are prepared to do and suffer much for the sake of leaving a reputation behind them. Besides, speaking ill of the dead frequently besmirches the living. Not only individuals but corporate bodies have each their reputation, and detraction may be committed against a Religious Order, for example, or a diocese, as well as against individuals.

2. Inasmuch as detraction is contrary to justice and charity, which, as we have seen, bind under a grave obligation, it will of itself be a serious sin, though frequently only venial on account of levity of matter. The measure of the gravity of the sin will be the harm which it causes to the person whose reputation suffers. The making known of the grave but secret sin of another with malicious intent or to his serious injury will certainly be a mortal sin. The disclosure of a venial sin of another, or even of some hidden defect for which he is not responsible, as, for example, illegitimacy, may cause him serious damage and constitute a grievous sin. However, the making known of even a grievous sin of another is not always mortally sinful, for sometimes no serious harm follows from it. A notorious drunkard will not be injured appreciably if a secret sin of drunkenness is made public, nor a woman

of doubtful reputation if some specific fall is mentioned. On the other hand, although a man has lost his reputation in one particular matter, he may still have one to lose in other matters, and if his secret sins in these matters be made known, a more or less grievous sin of detraction will be committed. A man may be of notoriously loose morals but with a character still to lose for honesty and uprightness.

3. When a man has been tried and condemned in an open court of justice, there is no wrong done him by publishing the fact in the newspapers, or telling it to those who would not otherwise have heard of it. The judicial sentence penalizes him and deprives him of the right to his reputation in the matter touched by the sentence. This holds true of distant places and countries, and even of distant times. No injustice, then, is committed against one who has been legally convicted of crime by making this known in a place to which he has come in the hope of its not being known. Uncharitable harm might be done against such a one if he was trying to lead a good life in his new surroundings.

Similarly, the sin of detraction is not committed when a sin which is matter of common report in one place is made known in another, if the knowledge of it would be sure to penetrate there before long. It is a disputed point among theologians whether or not sin is committed in such a case if otherwise the knowledge would not penetrate to the place where it is made known. At any rate, it is advisable to keep silence about such cases unless there be some good reason for making known the truth. If someone is thinking of employing an unknown servant whom we know to have committed theft from her former mistress in another part of the country, we are justified in making the fact known to the person concerned. It does not follow that we are justified in publishing elsewhere the sin of another which was well known indeed to a particular circle or community, but which was not really public. In such a case the right to one's reputation with the outside world has not been lost.

4. The right to one's reputation is not absolute. We are, of course, never justified in calumniating another by imputing false charges to him. But for just and sufficient reasons we may make known the secret sin of another. There are cases when this is necessary for the public good or for the protection of the rights of the innocent, and in a conflict of rights the stronger should prevail. Thus, when lawfully summoned to give evidence in a court of justice we may witness to secret

crime, and generally, whenever the defence of ourselves, or of the innocent, or the good of the delinquent himself, or of our hearers, require the truth to be made known.

5. If by listening to a detractor we encourage him to slander another, we are formal co-operators in his sin and are as guilty as the detractor himself. If our listening is not indeed the efficacious cause of the detraction, we do not sin against justice, but we sin against charity if we could prevent the detraction and do not do so. For charity obliges us, as we saw above, to correct an erring brother and to prevent harm being done to our neighbour as far as possible. It is true that private individuals will seldom be bound by a grave obligation in this matter; frequently they could not intervene without doing more harm than good; but those in authority are more frequently and more strictly bound to correct their subjects and to defend their reputation against slander.

6. Inasmuch as detraction, calumny, and other sins of the like nature are contrary to justice, they will always leave the obligation of making restitution as far as possible for the unjust damage which they cause, as we saw above when treating of restitution.

CHAPTER III

ON CONTUMELY

1. OUR neighbour has a right not only to his good name but also to the honour or the external marks of our esteem, befitting his qualities and position. The Apostle exhorts us to "love one another with the charity of brotherhood, with honour preventing one another,"[1] and in another place he bids us render honour to whom honour is due.[2] The sin of contumely is committed by any act or word which is contrary to the honour which we are bound to show our neighbour. It may be committed by neglecting to show him the honour which is his due, or by saying or doing something in his presence which expresses our contempt of him.

2. Contumely of itself is a grave sin against justice and charity, for it injures a man in what he values more than wealth, and as a rule an insult wounds the reputation, as well as the feelings of him who is insulted. Our Lord's words show how grievous a sin is committed by treating another with contumely: "Whosoever shall say to his brother, Raca, shall be in danger of the council. And whosoever shall say, Thou fool, shall be in danger of hell fire."[3] Like most sins against justice and charity, contumely may be only a venial sin, for levity of matter, and chaff or banter, which is not intended to wound or irritate another, is of course harmless provided that it keeps within due bounds.

3. Inasmuch as contumely violates justice, proper satisfaction must be made for insults. The kind and manner of making satisfaction will depend much on the relative condition of the parties. Sometimes the person injured may be reasonably presumed not to wish the memory of the insult to be revived by formal apologies, and the danger of again arousing bitter and angry feelings may also excuse one from open acts of satisfaction.

[1] Rom. xii 10. [2] Rom. xiii 7. [3] Matt. v 22.

CHAPTER IV

ON LYING

1. A LIE is defined by St Thomas to be a speech contrary to one's mind.[1] It is, then, of the essence of a lie that there should be an intention of saying what is false, that there should be a contradiction between the mind and the external expression of it. One may tell a lie, then, by saying what is true if it is believed by the speaker not to be true, and a lie is told by denying what is false if it is believed to be true. Although a liar usually has the intention of deceiving others, yet such an intention is not of the essence of a lie. A man may be well aware that he has no chance of being able to deceive another, but may say what he knows to be untrue in order to excuse himself or not to stand self-convicted. Men who are known to lie habitually do not expect others to be deceived by what they say, but still they lie when they say what is not true. One may lie to God, though he knows that he cannot deceive him.

In saying that a lie is a speech contrary to one's mind we understand not only words but gestures, or any signs by which our thought is manifested to others. As St Augustine says: "He tells a lie who has one thing in his mind and says something else by word or by any signs whatever."[2] For we may and do constantly speak not only by word of mouth, but by our tone, looks, gesture, actions, and by the very circumstances in which our words are uttered. The words "I am not guilty" in the mouth of a murderer have quite a different meaning when they are uttered in the dock and at the feet of his confessor. The words, the tone, the look may be the same; the circumstances make it a true speech in the first case and a sacrilegious lie in the second.

A lie in action is called *hypocrisy* or *simulation*, but the malice is the same as in lying words.

Lies are divided by theologians into jocose, officious, and hurtful lies.

A jocose lie is told to amuse others; it is something said in joke which the speaker knows to be false, and uttered with

[1] *Summa*, 2-2, q. 110, a. 1. [2] *De Mendacio*, c. 3.

the intention of saying what he knows to be false. If what is not true is said in joke without any intention of lying, and in such a way that ordinary hearers would understand, there is no lie. To speak ironically is not to lie.

An officious lie is a lie of excuse, or a falsehood which, while procuring some advantage, does nobody any harm.

A hurtful lie does an injury to someone.

2. According to the common Catholic teaching, lying of every kind is intrinsically wrong; so that, inasmuch as we may not do evil that good may come of it, we are never justified in telling a lie, not even if the life of another or the safety of the world depended on it. St Augustine, St Thomas, and other Catholic Doctors and theologians gather this doctrine from the teaching of Holy Scripture which in many places seems to forbid all lying as absolutely as it forbids theft or homicide.[1] Pope Innocent III gives expression to this teaching when he says in the *Decretals*, " Since Holy Scripture prohibits lying even to save the life of another."[2] Reason teaches us the same doctrine. For a lie is something inordinate in itself. It is a perversion of the moral order which the law of nature prescribes should be observed between the mind and the expression of it in our intercourse with others. We are endowed with the faculty of making known our thoughts and feelings to others; right order requires that the external expression should agree with the internal thought, that the machinery should be correctly regulated, that there should be no contradiction between the parts of the same agent, as there is when a lie is told. The moral turpitude which there is in such a contradiction between the mind and its external expression is well seen in the vice of hypocrisy. When a man pretends to be other than he is, there is the same perversion of right order that there is in lying. It is like a monstrosity in nature; the parts of one whole do not fit harmoniously together; they are out of gear and offensive to the view. There is, then, a special virtue of veracity which prescribes that when we have to make known our thoughts and feelings we should do it truthfully, or, in other words, we should make the outward expression agree with the thought. This virtue of veracity exists and is of obligation apart from any right to the truth that there may be in others. Veracity is something which we owe to ourselves as well as to our neighbour. It is true indeed that society is very much interested in sincerity and veracity. Social intercourse is very much hindered by

[1] Col. iii 9; Eph. iv 25. [2] C. Super eo, De usuris.

lying and the mistrust which lying generates. But although this is true, yet lying must be avoided primarily because it is unworthy of the dignity of man; it is a perversion of right order; it is intrinsically, in itself, wrong.

Some of the Greek Fathers held a different view from the above, and thought that lying was not wrong under all circumstances, but that it was occasionally allowable, like medicine, on account of inevitable necessity. English moralists have very commonly held a similar opinion, that a lie is only told when what is false is said to one who has a right to the truth. Some modern Catholic theologians have also adopted this opinion, which places the malice of lying in the denial of the truth to one who has a right to it. They do not, however, sufficiently explain the nature of that right, whether it is a strict right of justice, or a right in a vague sense demanded by the good of society, and so due out of legal justice, or charity, or piety, or obedience. Moreover, it is as difficult to determine when that right exists as it is to determine what is a lie according to the common opinion, and the door seems to be opened to promiscuous lying provided that no injury be done to our neighbour. The only lie which the theory acknowledges seems to be the hurtful lie. Nor does it sufficiently answer the arguments on which the common opinion is based.

3. If it is never lawful to tell a lie, if the lie of necessity cannot be allowed, what means have we of safeguarding a secret?

Catholic theologians answer this question by propounding their doctrine of mental reservation. Mental reservations are either strictly or widely so called. The former is the restriction of one's meaning in making an assertion to the proposition as modified by some addition made to it within the mind of the speaker. As if on being asked "Are you going to town?" one were to answer "Yes," meaning "in imagination." In wide mental reservations the words used are capable of being understood in different senses, either because they are ambiguous in themselves, or because they have a special sense derived from the circumstances of time, place, or person in which they are spoken. Thus, when a servant says that her master is not in, the words may mean either that he is absent, or that he does not wish to see the visitor. The servant's real meaning is restricted to one of these senses. In the same way a defendant on his trial in an English court of justice pleads not guilty—*i.e.*, until the charge be proved. A lawyer or a doctor questioned about professional secrets replies, "I

don't know "—*i.e.*, I have no knowledge which I can communicate.

Although strict mental reservations are lies, and therefore sinful, yet wide mental reservations are in common use; they are necessary, and they are not lies. They are necessary because justice and charity require that secrets should be kept, and frequently there is no other way of keeping them. They are not lies because, as we saw above, words take their meaning not only from their grammatical signification, but from the circumstances in which they are used. When a priest is asked about a sin which a penitent has confessed to him, and he answers, " I never heard of it," he speaks as a man, not as a confessor who holds the place of God in the tribunal of Penance. All are aware that he is a priest, and to all his words mean, " I never heard of it outside of the confessional." He never speaks of what he has heard inside the confessional, and nothing can, or should, be gathered about what he has heard there from the words which he uses. Although these wide mental reservations are not lies, yet they must not be employed without just cause, for the good of society requires that we should speak our mind with frankness and sincerity in the sense in which we are understood by our hearers, unless there be a good reason for permitting their self-deception when they take our words in a sense that we do not mean.

Truth requires not only that we should say nothing that we know to be false, but also that we should weigh our statements and not make rash and unconsidered assertions. There are some people whose talk runs babbling along like a stream in a fresh, and with as little meaning. A man with a love for truth will be more sparing of his words, and will weigh them before giving them currency.

CHAPTER V

ON SECRETS

1. A SECRET is some hidden matter concerning another which cannot be made known without causing him injury or displeasure. Besides the secret of the seal of confession, which is treated of elsewhere, divines distinguish three kinds of secret: the natural secret, the promised secret, and the secret which is communicated under an express or implied contract of secrecy.

When we come to the knowledge of something concerning another which cannot be made known without causing him injury or displeasure we are under the obligation of a natural secret not to make it known. This obligation arises from charity and justice, inasmuch as these virtues forbid us to do anything to the hurt or annoyance of our neighbour.

If we come to know something concerning our neighbour and then give a promise not to reveal it to others, we are bound by a promised secret. If the matter was of its nature secret, there would be the obligation of a natural secret independently of the promise. When the promise is given, a special obligation arising therefrom binds the party to secrecy. In case the matter was not of itself secret, the only obligation would be that arising from the promise. It depends to some extent on the intention of the promisor as to what obligation he takes upon himself by his promise. He may intend to bind himself to keep his word by the virtue of fidelity, because it is the duty of an honest man to keep his promise. In this case, as fidelity only binds under pain of venial sin, there will only be this obligation to observe the promised secret. However, if the other party to whom secrecy was promised would suffer serious loss from the violation of the secret, or if the parties were bound by mutual promises, then justice would require the secret to be kept, and the violation of the obligation would of itself be gravely sinful. Apart even from these circumstances, the promisor may intend to give the other a right to secrecy in justice, and then he will be bound to observe it under pain of mortal sin.

A secret which is confided to another under the condition

that secrecy is to be observed constitutes the matter of an onerous contract and binds more strictly than either a natural or a promised secret. Such are secrets of office which officials of all sorts become aware of in the execution of the duties entrusted to them; professional secrets of doctors, lawyers, priests, and others, who are consulted as experts by people in doubt or difficulty; as well as all others which are entrusted to any person under the express or implied condition of secrecy.

2. The obligation to observe a natural secret will cease after the secret has become public property. The party whose secret it is may sometimes be reasonably presumed not to be unwilling that the matter should be communicated to another, as, for example, to somebody who can and who will be of assistance to him. If the public good requires that the secret should be made known in order to prevent public wrong, the obligation of secrecy will cease, for the public welfare is of greater importance than that of an individual. If serious harm threatens one's self or some other innocent person, or the party whose secret is in question, and the harm can only be averted by making known the secret, this will be allowed in the case of natural or promised secrets. The right of defence from impending evil prevails over that of natural and promised secrets.

Even the obligation of the third class of secrets will cease when they cannot be observed without serious harm to the public weal. The natural law, however, which requires that people should be able to consult others in their difficulties in all security, demands that this class of secret should be observed in the case when even serious harm threatens some innocent person, unless he whose secret is in question is the cause of the impending evil. Thus, if I know as a professional secret who is the real culprit in the case of a crime wrongly imputed to an innocent person, I may disclose the real culprit if by some special means he caused the false accusation of the innocent person, otherwise I must keep the secret. It is a disputed point among theologians whether I am bound to observe a secret at the peril of my life when it was entrusted to me under that express condition, some maintaining that no one can pledge his life in that way, others more probably holding the contrary. Whether or not I am bound at my own serious loss to keep a secret entrusted to me under the condition of secrecy depends to some extent on circumstances. Sometimes I cannot be supposed under the circumstances to

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have bound myself by so strict an obligation; but as a rule professional secrets will continue to be binding even when the observance of them entails serious loss.

3. We are bound to make known natural and promised secrets at the command of lawful superiors. The obligation of obedience to lawful authority prevails over that of secrecy due to individuals in those cases. And so a witness in a court of justice when lawfully questioned about what he knows under the obligation of natural or promised secrecy must give the evidence required. Similarly, secret impediments to marriage must be declared according to the precept contained in the proclamation of banns. Professional secrets, however, and, in general, secrets which belong to the third class, are privileged, and must not be declared, unless they have ceased to be binding for some such reason as those mentioned above. Secrecy in this case is demanded by the natural law, which gives the fullest possible security to those who consult others in their difficulties, and even the precept of one's superior cannot avail against the natural law, as St Thomas teaches.[1]

English law acknowledges the privilege of state secrets and of the professional secrets of lawyers, but in the case of doctors and clergymen it does not as yet go the full length of the doctrine laid down above.

4. The doctrine with regard to secrets is applicable to the opening and reading of letters, unless it is known that they contain no secrets and the writer is not aggrieved. It is, however, a general rule of Religious Orders that letters written by and to religious may be opened by the superior, except such as contain matters of conscience, and communications between higher superiors and their subjects.

[1] *Summa*, 2-2, q. 70, a. 1, ad 2.

BOOK VII

ON CONTRACTS

PART I

ON CONTRACTS IN GENERAL

CHAPTER I

THE NATURE OF CONTRACT

1. RIGHTS may be acquired by one person from another when the latter voluntarily surrenders them in favour of him by whom they are freely accepted. This is done by contract, which may be defined as an agreement by which one or more persons bind themselves to do, give, or forbear something in favour of one or more other persons.

Contracts are express or implied. Express contracts are entered into by word of mouth or by writing. Implied contracts are formed by the virtual or implied consent of the parties. Thus, whenever a person undertakes an office he virtually agrees to perform all the duties annexed to it by law or custom, or which the nature of it demands. These latter are also called quasi-contracts.

By a unilateral contract one only of the parties becomes subject to an obligation, as by a simple promise to do something in favour of another. A bilateral contract, such as that of sale, imposes an obligation on both parties.

A gratuitous contract confers advantage on one of the parties only, though both may incur an obligation by it. An onerous contract confers advantage on both parties. Thus, if I lend my horse to a neighbour for the day, he alone derives advantage from the contract, though I am bound not to demand the horse back until the appointed time arrives. If the contract is one of hiring, both parties derive advantage from it, and both are laid under obligations by it.

A consensual contract is formed by the mere consent of the parties, a real contract by the delivery of the object of the agreement.

A solemn or formal contract is entered into with the formali-

ties required by law. A simple contract has no such formalities. In English law some simple contracts give no right of action unless they are in writing, or unless they have some other adjunct which serves as evidence of the contract. Thus by the Sale of Goods Act, 1893, sec. 4, "a contract for the sale of any goods of the value of ten pounds or upwards shall not be enforceable by action unless the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf." In these cases the law does not annul the contract if it is destitute of the legal requirements, or make it voidable; it only renders it unenforceable in the courts of law. The only formal or specialty contract in English law is the deed. A deed is a document in writing or printed on paper or parchment. It is executed or made conclusive between the parties by being signed, sealed, and delivered. The seal is often affixed to the deed beforehand, and this is executed and made operative by the party whose deed it is placing his finger on the seal and saying, "I deliver this as my act and deed."[1]

2. In moral theology we have chiefly in view the natural obligation in conscience which arises from every true contract to act in accordance with the agreement entered into. That obligation is one of justice, for a contract gives a strict right in justice to the fulfilment of the agreement. We cannot, however, afford to neglect positive law, ecclesiastical and civil, especially in the matter of contracts. It is a received axiom that contracts are governed by the law of the country. So that a question for consideration arises here, whether positive laws, which require certain contracts to have a special form for their validity, bind the conscience, so that if they are informal they are null and void in conscience as they are in law.

No difficulty exists with regard to contracts which are governed by ecclesiastical law. The effect of the Tridentine law, which makes marriage null and void if not contracted in presence of the parish priest and of two witnesses, is clear from its terms. The same is true of other ecclesiastical laws which annul contracts. A difficulty arises only with regard to civil law, which does not usually explain whether defect of form in specialty contracts merely affects the legal obligation, or whether it affects also the natural obligation, making the

[1] Anson, *Law of Contract*, p. 51.

contract null and void in conscience, so that no rights or obligations of any kind arise under it.

The civil authority can certainly make laws which would have that effect in its own department, as all admit. It is a question of fact as to what is the effect of such voiding laws in any particular system of jurisprudence. It is a well-established opinion among English moralists that English laws which make acts void for want of legal form do not absolutely and at once annul the act, but only make it voidable.[1] So that defect of form in deeds and testaments will not prevent them from taking effect according to the intention of him who made them. If, however, it be the interest of someone to have the informal act set aside, he may use the benefit which the law gives and set it aside, provided that there is no fraud. Modern theologians commonly hold this opinion concerning the effect of voiding laws in other modern systems of legislation.

3. From the definition of contract it is clear that its essential elements are: (1) The consent of the parties; (2) parties who are capable of giving a valid consent; (3) the subject-matter of the agreement. These will form the subject of the three following chapters.

The law of the country concerning contracts is *canonized* by Canon 1529, which is as follows: "Let the same be observed in canon law in ecclesiastical matters with the same effects which the civil law in the country lays down concerning contracts both in general and in particular, whether nominate or innominate, and about payments, unless it is contrary to divine law, or it is otherwise determined by canon law."

[1] Jeremy Taylor, *Ductor dubit.*, bk. 2, c. 1, r. 5, n. 22.

CHAPTER II

ON CONSENT

1. THE consent of the parties is the efficient and formal cause of a contract. When the two wills meet together and agree on the matter of the contract, the contract is formed. In order to produce its effect this consent must have certain qualities; it must be deliberate and free, mutual, internal as well as external.

It must be deliberate, for a contract imposes a perfect and serious obligation on the parties, an obligation which they voluntarily take upon themselves, and which is not imposed from without. Now such an obligation cannot arise from a semi-deliberate act; full and perfect deliberation is required to give rise to a full and perfect obligation which is voluntarily undertaken.

It must be free, not unjustly forced; for an obligation which binds in justice cannot arise from injustice.

It must be mutual, for a contract is the agreement of two wills. It is not necessary that consent be given at the same time by both parties. Provided that one of them has consented previously and his consent still endures, the contract will be formed when the other party gives his consent, for then there will be the agreement of the two wills.

It must be internal, for a contract is an agreement of wills; one renounces a right in favour of the other who accepts it, and this requires an internal act of the will. If the internal act be wanting, we may have a seeming contract, a contract in appearance, a fictitious but not a real contract. Inasmuch as a fictitious contract is no contract at all, it cannot as a contract bind the conscience, and so one who enters into a contract without intending to bind himself is not bound by it. He is, however, guilty of deception and fraud, and on this ground he is bound to indemnify the other party for any damage that he has caused him by his sinful and unjust action; and if the only means of doing this is for him to fulfil the terms of the contract, he will be bound in justice to do that. When a contract is entered into without the intention of fulfilling its obligations, there is no contradiction here as in the

former case; the contract exists, and its obligations must be faithfully executed.

Internal consent is not sufficient of itself to form a contract; it must also be outwardly manifested to the other party in order that he may know that his offer has been accepted and that there is mutual agreement. In other words, the consent must be external as well as internal. This internal and external agreement of the parties to a contract is brought about by an offer being made by one of them and accepted by the other. As soon as acceptance is externally manifested, all the requisites for a contract are present, and it forthwith springs into existence, even though the offeror does not yet know of the acceptance of the offeree. English law accepts this doctrine so far as to decide that " if acceptance through the post is expressly or by implication prescribed or permitted by the offeror, acceptance is made, and the contract is concluded, at the moment when an acceptance is duly posted for transmission to the offeror, even though the acceptance is delayed or lost in the post."[1] Ordinarily, however, acceptance is not complete until it is communicated to the offeror.[2]

2. Mistake concerning what was principally intended in the contract is said to be substantial, and it renders the contract null and void, for there is then no agreement of wills in the same matter. Thus, if one of the parties thinks that the contract is one of hiring, while the other thinks it is a sale, the mistake is substantial, and there is no contract. Similarly, mistake about the matter of the contract is substantial, and vitiates it, as if one thinks he is buying gold, while the other knows that it is brass. Mere ignorance as to what the object was would not make the contract invalid. Again, if one of the parties makes his consent conditional on some definite point, there will be no consent and no contract if the condition is not verified. Mistake concerning the other party to the contract is as a rule not substantial, and does not vitiate the contract. In marriage, however, and in gratuitous contracts in favour of a certain person for purely personal reasons, mistake about the person of the other party is substantial. Even in onerous contracts mistake about the person with whom the contract is made may be substantial in special circumstances, when for particular reasons the consent is given only to a definite person.

3. Mistake about what is accessory and accidental in a contract does not invalidate it, for there is agreement about

[1] *Digest of English Civil Law*, n. 198. [2] *ibid.*, n. 196.

what is substantial and essential. Even if the party would not have entered into the contract if he had not been under a mistake about some matter which is accidental to it and not substantial, still the contract is valid, for, in fact, he gave his consent; unless, of course, he only gave consent conditionally, on some supposition which was not verified.

4. If, however, one of the parties was induced to give his consent by the fraud or misrepresentation of the other, and he would not otherwise have entered into the contract, the contract is voidable at the option of him who was deceived. The law of nature seems to indicate this as a suitable means of repairing the injury done by the fraud, and it is confirmed by English civil law.

Even if there be no fraud or misrepresentation but only non-disclosure of facts which it was of importance for the other party to know, this will suffice to enable the party who had a right to full knowledge to avoid contracts of marine, fire, and life insurance, for the sale of land, for family settlements, and for the allotment of shares in companies. Such contracts are in English law said to be *uberrimae fidei.*

5. A contract is also voidable at the option of one of the parties who has entered into it under duress—*i.e.*, actual or threatened violence affecting the contracting party, or his wife, parent, or child, and inflicted by the other party to the contract, or by someone acting with his knowledge and for his advantage. Fear caused in other ways does not invalidate the contract or make it voidable, unless it was so great as to deprive the contracting party of the use of reason. When one of the parties stands to the other in the relation of parent, guardian, trustee, medical attendant, legal adviser, spiritual director, or the like, any contract between them by which the one in authority obtains benefit or advantage may, according to English law, be set aside by the other on the ground of undue influence, unless it can be shown that the transaction was fair. The burden of proving this rests on the superior, who will seldom be successful unless he can show that the other had access at least to independent advice.

CHAPTER III

CAPACITY OF PARTIES

1. By the law of nature, all persons who have the full use of reason are capable of entering into contracts. On the other hand, children who have not yet attained the full use of reason, persons of unsound mind, and those who are drunk, cannot make valid contracts. We must, however, take into account the provisions of positive law which affect contractual capacity.

2. Religious who are professed to solemn vows, and are consequently incapable of holding property personally, cannot personally acquire property rights or liabilities under contract. Religious who are under simple vows are capable of holding property, and they can make valid contracts with reference to it; but they do not act lawfully without the permission of their superiors. In other matters, also, religious are dependent on the will of their superiors, and cannot lawfully undertake contractual obligations without their permission. If they do so, the contracts may be avoided by the superior, except as regards the acquired rights of third parties (Can. 536).

3. A married woman is now, by the Married Women's Property Acts, 1882 and 1893, in the same position as a single woman as regards the acquisition and disposal of property, and the acquisition of rights and liabilities in contracts. Still, she is not personally liable in respect of contract nor for fraud committed in connection with contract. Her liability can only be enforced against her property. She cannot be made a bankrupt unless she is carrying on a trade apart from her husband.[1]

4. A minor can enter into a binding contract which is for his advantage, as, for example, an apprenticeship; he can also make a valid contract to pay a reasonable price for necessaries, or for goods and services which are suitable to his position and which are actually required for his reasonable comfort. Other contracts entered into by minors are void in law and voidable in conscience, and no ratification of them after full age has been attained is enforceable, whether there be a new consideration for them or not. Of course, a minor cannot

[1] *Digest of English Civil Law*, n. 71.

abuse the privilege which the law gives him in order to cheat and defraud others; if he has obtained a benefit even by contracts which are void by English law, he must pay a just price for it, and even English law will not enable him to recover money paid by him under such contracts if he has received benefit under them.[1]

5. Convicts under sentence of death, or undergoing penal servitude for crime committed, have no legal capacity, and cannot enter into a contract which English law will recognize. Any property belonging to such a convict is administered in accordance with the provisions of the Forfeiture Act, 1870, by an administrator appointed by the court.

6. The unilateral acts of a person of unsound mind are by English law void, unless they were done during a lucid interval.

His contracts other than marriage are valid, unless it can be shown that the other party to the transaction was aware of the unsoundness of mind. In that case they are voidable at the option of the person of unsound mind or his representatives. The same rules hold good of the contracts of drunkards in English law.

7. Corporations or artificial persons are *per se* capable of entering into contracts through their agents in much the same way as natural persons. Those, however, that are created under the authority of English law by statute, or are formed under general statutes such as the Companies Acts, for definite purposes, are held incapable of binding themselves for objects clearly beyond those purposes as declared in the company's constitution.[2]

[1] *Digest of English Civil Law*, n. 54.
[2] *Encyclopedia of Laws*, *s.v.* Contract.

CHAPTER IV

THE MATTER OF CONTRACT

1. THE subject-matter of a contract must be something that is possible, for there can be no obligation to do what is impossible. Mere inability, however, to perform what one promised must not be confounded with impossibility. If the performance of a contract is contrary to the course of nature, it is void. No one can bind himself by contract to visit and report on the other side of the moon.

If at the time of concluding the contract the performance of it was impossible in fact, it is not void unless the parties contracted conditionally upon performance being possible in fact. The contract also remains valid if it was possible at the time of concluding it, but subsequently it becomes impossible without fault of either party, unless the parties intended that the contract should cease to be binding if performance became impossible. This intention is presumed when the possibility of performance was known by the parties to depend upon the continued existence of some thing, condition, or state of things, which has ceased to exist, and when the performance becomes impossible by reason of the death or illness of one of the parties, in the case of an agreement relating to personal services to be rendered by that party.[1]

When the performance of a contract is or becomes in part possible and in part impossible, it is a question of intention, depending in each case on usage and construction, whether the partial impossibility avoids or discharges the contract.

2. The matter of a contract must either exist or there must at least be some probability of its future existence when the contract is entered into, otherwise there is nothing of value and no right to transfer, and a necessary condition for a contract to come into existence is wanting.

3. The matter must be determinate or capable at least of being determined, otherwise the terms of the contract will be too vague, and no agreement of wills on the same matter is possible.

4. The matter must be something of which the contracting

[1] *Digest*, n. 294 ff

party has the disposal, or of which he will have the disposal when the contract has to be executed, for he cannot transfer to another what he cannot dispose of. When an object is already due to another in justice, its transfer to him cannot form the matter of a new contract, and so if a judge sells justice to a litigant he is bound to restore the bribe, to which he has no title. One may, however, enter into a contract with a third person to do what is already owing in justice to someone else, provided that both obtain their full rights. A doctor, for example, may charge next-door neighbours the full fee for a visit to each, though he has only the trouble and expense of one journey. Similarly, what is already due, not in justice but out of charity or some other virtue, may form the matter of contract.

5. There can be no obligation to do what is wrong, and so the matter of a contract must be something which is lawful and honest. It is obvious that a contract to do what is forbidden by the moral law is invalid. If, however, such a contract has been executed and the crime committed by one of the parties, the question arises whether he has a right to the money or other compensation which was promised, and which, as we suppose, may be received without sin. There are two opinions about this question. Some theologians hold that no such right can exist, for the contract was invalid from the beginning and remains so; mere lapse of time cannot make it valid. On the other hand, many great authorities maintain that the actual doing of the sinful action in favour of one party to whom it is agreeable, and to whom it affords advantage of some sort, is the concluding of an innominate contract, and gives the party who did it a claim in justice to the compensation promised. Both views are probable, and so after the sin has been committed, and consideration for it has been paid, there will be no obligation to make restitution.

Sometimes the Church forbids a contract under pain of sin only, and then such contract will be unlawful but valid, as is a mixed marriage without the requisite dispensation; sometimes she forbids a contract and also invalidates it, as she does clandestine marriages.

There are some contracts which are illegal in English law, and yet they are valid in common estimation. This is the case with betting, and so if the contract is valid according to the law of nature, it will be obligatory in conscience, though unenforceable by English law. Other illegal contracts which are forbidden by the civil law of England are not thereby

made invalid in conscience if they are valid by the law of nature. The law merely affects the external legality of the contract which it refuses to enforce. If, however, one who has entered into such a contract wishes for good reason to avoid it, and acts without fraud or injustice to the other party, he may take advantage of the law and rescind his contract. This doctrine is in keeping with what has already been said in similar questions concerning the effect of civil law and with the views of modern theologians on the subject.

CHAPTER V

CONSIDERATION, AND THE EFFECTS OF CONTRACT

1. By English law no simple contract is binding upon a party unless he receives consideration for his promise. The promisor is said to receive consideration for his promise when the promisee does, forbears, or suffers, or promises to do, forbear, or suffer, something in exchange for, and at the time of, the promise made to him.

Inasmuch as the intrinsic reason and motive for entering into a contract is an essential element of it, and a condition *sine qua non* of its existence, to this extent we may say that consideration is necessary for the validity of a contract by the law of nature. Thus, if I give an alms to a beggar merely because he represents himself to be destitute, he will have no right to the alms if he is not destitute but well off. Again, if I buy a horse for running in a carriage and the animal which I obtain is quite useless for my purpose, the contract is null and void. However the English doctrine of consideration is different from this. In English law consideration must be something of value, not necessarily of equal or adequate value, but there must be a *quid pro quo;* a merely good consideration, as pity, gratitude, or relationship, will not be sufficient. If a simple contract has no such valuable consideration, it has no binding force. However, want of valuable consideration will not make a contract null and void in conscience; it will be valid in conscience if it has all the elements required by the law of nature, and in consequence it will be obligatory in the forum of conscience. It will merely be unenforceable in English courts of law.

2. The primary effect of a contract is to impose an obligation on the parties which binds them in justice to fulfil the contract. If one party fails to do so, the other will have a right to be compensated for the loss that he has suffered.

The extent and quality of the obligation imposed by a contract will depend on the intention of the parties, which may be gathered not only from the express terms used by them, but also from the law, from custom, usage, and the character of the parties.

Only the parties who entered into the contract are bound by it. They may agree together to confer a benefit on some third person; the latter will then receive advantage from the contract, but his rights and liabilities will not be affected by it.

3. It used to be a common practice to confirm an agreement by oath, and the older theologians have much to say on the questions which arise from such a practice. It is now seldom done, and the matter may be treated briefly.

If an oath is added to a valid contract, besides the obligation of justice, a fresh obligation is added which binds the party out of reverence for his oath to fulfil his engagement. Inasmuch as the oath is accessory, and what is accessory follows the nature of the principal, the obligation arising from the oath will receive its interpretation from, and will cease with, the obligation of the contract. By Roman law, whose provisions were adopted by the canon law, the contracts of minors and certain other contracts which were of themselves rescindable, became irrescindable when they were confirmed by oath. This, however, was an effect of positive law, which has no counterpart in English jurisprudence.

4. The obligation of a contract may, according to the intention of the parties, depend on whether a certain event has happened or will happen in the future. The contract is then conditional, not absolute. If the event is past or present, but it is not known by the parties whether it has happened or not, the contract at once is valid or not, according as the condition is fulfilled or not, but the parties will not know whether they are bound by the contract until they know whether the condition be fulfilled or not.

When the event is future, and its happening will, according to the intention of the parties, discharge the parties from obligation under the contract, the condition is subsequent. The parties are bound by the contract and will continue to be so bound, unless and until the subsequent condition is verified.

When the parties agree that the contract shall depend upon the happening of a future event, there is a condition precedent. An obligation at once arises from such an agreement of awaiting the event; when it has taken place the contract becomes absolute and begins to bind without any fresh act of the contracting parties; if the event does not take place, the obligation is discharged.

5. Sometimes on entering into a contract something is given as earnest, which serves as evidence that the contract has been

concluded, or as security that it shall be performed. Unless there is a contrary agreement between the parties, the earnest will be treated as part payment or will be returned upon performance; it will be forfeited if the party who gave it fails to perform; it will be returned if the party who received it fails to perform.

If it is agreed that a certain sum is to be paid in the event of breach of contract by the party who was in default, the whole sum will be due if it represents liquidated damages. If, on the contrary, it is a penalty, the injured party, according to English law, cannot recover more than the amount of the loss actually suffered by him.[1]

[1] *Digest*, n. 313.

CHAPTER VI

DISCHARGE OF CONTRACT

THE obligation arising from a contract may cease to exist in several ways:

1. By mutual agreement, by which each party renounces his rights under the contract. Cessation of contract by merger of one in another, or by substitution of one for another, may be classed under this head.

2. A contract ceases by performance when each party has wholly performed his duty under it.

3. When a contract consists of reciprocal promises, and one party fails to perform, or clearly expresses an intention not to perform, or disables himself from performing his promise, the other party may, at his option, treat the contract as at an end, and it is thereby discharged. Failing this, the injured party continues liable to perform his part, but he may claim damages for breach of contract by the other.

4. A contract which has for its object the rendering of a personal service is discharged by the death or incapacitating illness of the promisor.

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PART II

ON SPECIAL CONTRACTS

CHAPTER I

ON PROMISES

1. A SIMPLE promise is a unilateral and gratuitous contract by which the promisor binds himself to do something for another.

English law will not enforce a simple promise for which no valuable consideration was given and which was not entered into by deed. In truth, a simple promise is hardly considered to be a contract, inasmuch as this term is confined to such agreements as the law will enforce. However, in the forum of conscience a simple promise begets an obligation to fulfil it, for an honest man is faithful to his promises.

The mere expression of an intention or of a purpose to do something must be distinguished from a true promise. No new obligation is created by the former, whereas a promise imposes on the promisor a new obligation. This obligation arises from his intention to bind himself by his promise which must be made known to, and accepted by, the promisee. Until acceptance there is merely an offer, which may be revoked at will by the offeror; when the offer is accepted the promise becomes a binding contract.

2. There is a dispute among theologians concerning the kind and quality of the obligation imposed by a simple promise. An onerous promise for which consideration is given by the other party and mutual promises bind in justice, and consequently under pain of grievous sin in serious matter. Similarly, where the promisee has been led to rely on a promise, and would suffer serious loss unless the promise were fulfilled, the promisor will be under a grave obligation to fulfil it. Apart from these circumstances the obligation of a simple promise will depend on the intention of the promisor. If he intended to give the promisee a strict right to what was promised, he will be bound in justice; otherwise he will only be bound by the virtue of fidelity, which is a self-regarding virtue, and

imposes an obligation to make the fact agree with one's word. The virtue of fidelity of itself only binds under pain of venial sin.

3. A promise will cease to bind if some event takes place or becomes known subsequently which would have prevented the promisor from making the promise if it had happened or been known beforehand. For a simple promise is essentially conditional; the promisor binds himself to do something under certain suppositions and in certain circumstances; if those suppositions are not verified, or if the circumstances become changed, the obligation of the promise ceases. All the more will a promise cease to bind if what was promised becomes unlawful and wrong, or useless, or impossible. It is obvious that release by the promisee, and other causes, which are sufficient to discharge contracts according to what was said above, will also suffice to do away with the obligation of a promise.

CHAPTER II

ON GIFTS

1. A GIFT is a unilateral contract by which property is gratuitously transferred to another. It differs from a promise in that it takes effect at once, while a promise regards the future, and from such contracts as sale and exchange in that it is gratuitous. A gift *inter vivos* is distinguished from a gift *mortis causa* in that the latter is made in contemplation of death and becomes irrevocable only if death follows. If death does not ensue, a gift *mortis causa* is thereupon revoked. A gift *inter vivos* was revocable by Roman law on account of ingratitude and for certain other reasons; by English law such a gift is irrevocable (*cf.* Can. 1536).

2. By the law of nature any property may be transferred to another by gift provided that the donor is capable of making a valid gift, and it is accepted by the donee. Positive law requires other conditions to be fulfilled in order that a gift may be recognized and enforced in the civil courts. Thus English law requires a gift of chattels to be completed by actual delivery unless it is made by deed. Certain kinds of property can only be given by deed. These and similar provisions do not invalidate a gift which is made without the formalities required by law, but if a gift is disputed, and the authority of the law is invoked, both parties must stand by the decision of the Court. A gift to pious causes is governed by ecclesiastical law, which requires for its validity nothing more than what is necessary by the law of nature (Can. 1513, 2348).

The Church prescribes that in gifts made to the Church or pious causes, the formalities required by civil law should be observed as far as possible.

CHAPTER III

ON WILLS

1. A WILL is a legal declaration of a person's intentions which is to take effect after his death. In English law a will is not necessarily a disposition of property; the appointment of a guardian for one's children, or of an executor who will distribute the estate according to law, is a will if accompanied by the proper legal formalities. Ordinarily, indeed, a will is a disposition of property, but it frequently contains other provisions as well, as to the place of one's burial and other matters.

A will is not, strictly speaking, a contract, for the consent of the beneficiaries under it is not required for its validity, but it partakes of the nature of a unilateral contract, and is usually treated as such by theologians.

Lawyers and theologians are by no means agreed as to the source whence a will derives its effect. Some hold that the power of testamentary disposition is derived from the law of nature, inasmuch as there is nothing to prevent a man from doing some act and at the same time suspending its effect until after his death. Others maintain that the will of a person cannot produce its effect when that person is already dead; no disposition of property can be made by a human will that has ceased to act as far as outward manifestation is concerned. Nor does a will produce its effect until the testator be dead. They conclude, then, that the power of testamentary disposition is derived from positive law. We may, perhaps, hold as certain that the law of nature gives owners of property the right to dispose of it in some way in view of death, but that it does not determine of itself the method of disposition by will. This precise method is a result of the determination of the natural by positive law.

2. To be valid in English law a will must be made according to the provisions of the Wills Act (1 Vict. c. 26, sec. 9), which enacted " that no will shall be valid unless it shall be in writing and . . . signed at the foot or end thereof by the testator or by some other person in his presence, and by his direction, and such signature shall be made, or acknowledged,

by the testator in the presence of two or more witnesses, present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary."

By section 11 of the same Act an exception to the rule that a will must be in writing is allowed in the case of any soldier, being in actual military service, or any mariner or seaman, being at sea. These may make a valid nuncupative will of their personal estate by word of mouth, even if they be minors.

We saw above that it is a disputed point among theologians whether an informal will is valid in the internal forum of conscience, though it be invalid in law. Probably it is valid if it express the intentions of the testator, until a party interested moves to have it set aside. All parties must stand by the decision of the court.

A codicil, according to the terminology of modern English law, is a testamentary instrument altering or modifying a will. It requires for its validity the same formalities as does a will, and it may take effect without a will, if no will be forthcoming. A codicil to a particular will, or which refers to the provisions of the will, republishes the will and makes it speak as of the date of the codicil. But a testamentary instrument which is not described as a codicil to a will, and does not refer to a will, has not the effect of republishing the will.

A legacy is a gift in the form of a direction by testamentary instrument that the legal personal representative of the testator shall pay, transfer, or provide some money or thing to the recipient or legatee. The legatee derives his legacy from the executor, not immediately from the testator.

Anyone may be a legatee. A legacy bequeathed to a creditor of the testator is presumed to be in payment of the testator's debt, but the courts look with disfavour on this doctrine, and are quick to discover reasons for setting it aside. A legacy to an infant may be paid to him if the testator so direct; otherwise the legacy must be retained until the infant attains the age of twenty-one, or paid to his testamentary guardian, or paid into court.

A legacy may be given on condition, either precedent or subsequent. Conditions against change of religion are valid in English law.

A legacy may fail from invalidity of the instrument conferring it, from uncertainty or vagueness of the terms of the bequest, or uncertainty of the person designated; from insolvency of the testator's estate; from the testator having

disposed of the object in his lifetime if the legacy be specific; or from his having paid the legacy in his lifetime; and from the non-fulfilment of a condition on which the legacy was given. The legacy also lapses on the death of the legatee in the testator's lifetime.

If a legatee has been paid, and the estate subsequently proves to be insufficient either from the discovery of further debts or the loss of assets, he may be compelled to refund his legacy in favour of creditors, and similarly a residuary legatee may be compelled to refund in favour of general legatees.

Legacies ordinarily become due on the death of the testator, but they are not payable for a year, that period being allowed executors in order to collect the assets and to pay the debts.

To secure the safety of trusts and bequests to Catholic objects, attention must be paid to various provisions of English law. The rule against perpetuities is designed to prevent property from being tied up permanently, and to obtain this end it requires that every use or trust must be so limited as necessarily to vest within a life or lives in being and a further period of twenty-one years. A tolerably large class of objects technically called " charitable " has, however, been exempted from this rule. Among these objects are the promotion of any form of lawful religion, the relief of the aged and poor, the maintenance of the sick, the establishment of free schools, and others of a similar kind. Such trusts and bequests as English law considers to be " charitable " are therefore upheld, though they may infringe the rule against perpetuities. On the other hand, bequests for prayers and Masses for the dead were void as being bequests for " superstitious uses," but this doctrine is now abandoned. Trusts and bequests for the benefit of religious communities of men " bound by monastic or religious vows " are also void, as such communities are illegal in England. The Irish courts hold bequests for Masses to be for " pious uses " and not void, but subject to the rule against perpetuities as not being " charitable " in the technical sense. Trusts and bequests of land or of money to be laid out on the purchase of land are also subject to the Mortmain Acts.

These legal provisions do not bind the conscience with regard to legacies left to Catholic pious causes, nor is a Catholic justified in invoking them to make a pious legacy void for his own gain, but they should be known so that property left for Catholic purposes may be expended in accordance with the will and intention of the testator or donor (Can. 2348).

Wills and bequests for pious purposes among Catholics are governed by canon law, which requires nothing more than certain proof of the intention of the testator in order to make a testamentary disposition of property valid. It follows from this that bequests to pious causes contained in an informal will are valid, if there is morally certain evidence that it was the intention of the testator to make them. This doctrine has been frequently confirmed by answers of the Roman Congregations to questions proposed to them (Can. 1560, sec. 4; 1513, sec. 2).

3. Those who have not yet attained the use of reason and persons of unsound mind are incapable of making a will by the law of nature. Religious who are solemnly professed are incapable of making a valid will by the law of the Church. Minors under the age of twenty-one cannot make a valid will, according to English law.

A will that has been made under duress and undue influence will be set aside if appeal be made to English courts. Women married after December 31, 1882, can by will or otherwise dispose of their separate property whether real or personal, and women married before that date can by the Married Women's Property Act, 1882, dispose in the same manner of all property which accrues to them after that date.

4. A person who is capable of making a will may bequeath his property, both real and personal, to whomsoever he wishes; the legitim or reasonable part is not recognized by modern English law. This, of course, does not do away with the moral obligation of providing for those who have claims on the testator by reason of kindred or other ties. Still, for just cause, the testator may take advantage of the law, and leave nothing to one who otherwise would have been benefited under his will.

If a person dies intestate, his property will be distributed among his next of kin according to the statutes of distribution.

A person may be under a moral obligation of making a will from the command of a lawful superior, or because quarrels and dissensions about his property will be the consequence of his dying intestate.

5. A will is revoked by the subsequent marriage of the testator, by the due execution of a subsequent will which is inconsistent with the former, or by some writing declaring an intention to revoke the same and executed in the manner in which a will is required to be executed; or by the burning, tearing, or otherwise destroying the same by the testator or by some person in his presence and by his direction, with the

intention of revoking the same. Such are the provisions of section 20 of the Wills Act, 1837, and section 21 should also be noted. It is as follows: "No obliteration, interlineation, or other alteration made in any will after the execution thereof shall be valid or have any effect (except so far as the words or effect of the will before such alteration shall not be apparent) unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin, or on some other part of the will opposite or near to such alteration, or at the foot or end of, or opposite to, a memorandum referring to such alteration, and written at the end or some other part of the will."

6. The execution of a will is usually confided by the testator to a person or persons named by him and who are called the executors. Anyone who is capable of making a will may be made an executor, as may even a minor, though he cannot act until he attains full age. One or several may be appointed, but no one is bound to accept the office. If a person dies intestate, or if no executor was appointed in the will, or if he who was appointed refuse to act, an administrator will be appointed by the court to administer the estate. The widow or widower or the next-of-kin of the deceased person is as a rule the person to be selected. The will must be proved in the Probate, Divorce, and Admiralty division of the High Court. Probate in common or non-contentious form may be granted in the district registry within whose district the deceased had a fixed place of abode. Where the assets are small the county court has jurisdiction in contentious cases, otherwise these must be settled in the High Court.

An executor is the legal representative of the testator, and his duties are:

(*a*) To bury the deceased in a manner suitable to his estate. There is no property in a dead body, and a direction by will as to the disposition of the testator's body cannot be enforced by English law. Thus the executor would not be bound to have the body of the testator cremated, though directions to that effect were contained in the will.

Ecclesiastical law forbids cremation under severe penalties, and declares directions for cremation inserted in wills of no effect (Can. 1203; 1240, sec. 1, 5; 2339).

(*b*) To obtain probate within the prescribed time.

(*c*) To collect the effects of the deceased with reasonable diligence.

(*d*) To pay the debts of the deceased in the order and manner prescribed by law, and in general in the following order: funeral expenses, expenses of probate, Crown debts, debts having priority by statute, debts of record, debts by specialty and simple contract. The executor may voluntarily pay an inferior debt before a superior one of which he had no notice, and he is not at liberty to pay a debt which by law cannot be enforced against the estate, with the exception of a debt barred by time according to the statute of limitations.

(*e*) To distribute the estate according to the terms of the will.

Where there is no executor these duties devolve on the administrator appointed by the court, who, after payment of debts, distributes the estate in accordance with the will, if there is one, and if there is no will, then in accordance with the statutes of distribution. To enable the executor or administrator to fulfil these various duties he is allowed a year by law before he can be compelled to pay legacies or to distribute the estate.

CHAPTER IV

ON MUTUUM AND USURY

1. ECONOMIC goods may be divided into those which are meant for immediate consumption and those which are meant to subserve our wants by repeated use. In the first category are articles of food and drink, in the second are commodities which are capable of rendering continued services, such as a saw, a sewing-machine, a house. It is with the first class of goods that we have principally to do in this chapter. They are sometimes called fungibles because any amount is interchangeable with the same quantity and quality of the same commodity (*mutua vice funguntur*). Thus, if I lend a bushel of wheat, I shall be satisfied if I get back a bushel of the same quality; I do not expect to receive back the same identical grain. The matter of the contract of mutuum is something fungible, which is consumed in the very first use of it.

It is obvious that such commodities may be the matter of many different contracts. They may be the matter of the contract of sale, or gift, or exchange, or loan. The contract which was called mutuum in Roman and canon law was a gratuitous loan of a fungible commodity on condition that after a certain period of time the borrower should restore to the lender an equal quantity of the commodity and of the same quality. Unfortunately, we have no term in English which is the precise equivalent for mutuum. We use the term *loan* of lending a horse, which we expect to be restored to us *in specie*, and of lending a bottle of wine, which we do not expect back but another instead of the same size containing the same quality of wine. As an equivalent for mutuum we may make use of the expression *loan for consumption* as distinguished from *loan for use*.

In all contracts justice requires that values which are given in exchange should be equal. A sin against justice is committed by charging an unreasonable price for a horse. What the reasonable price is depends on the demand, on the available supply, and on a great variety of factors, but it is proximately determined by the common estimation of intelligent men at a fixed time in a certain place. The fair price of a

fungible commodity which is consumed in the first use of it is the money equivalent of the value which that use has. The commodity is for consumption, and the only value that it has is the value of that consumption. There is no other use in the commodity which can give it any additional value. The fair price of a bottle of wine is the money equivalent of the value which the wine has for drinking. In other words, the value of the first consumption of the commodity is the value of the commodity.

On the other hand, commodities which are not consumed in the first use of them, but which continue to render repeated services, have a value over and above that of the first use. The value of a house is greater than the value of the lease of it for a year, because the house will continue to render services and be valuable after the year's lease of it expires. The fair price, then, of a commodity which is not consumed in the first use of it will be greater than the value of that first use.

All this seems evident, yet with a view to the deductions which we shall presently make, it is well to strengthen what has been said by the words of a modern professor of political economy. Dr. G. Cassel writes: "All economic goods may be divided into two categories: those which satisfy our wants in being consumed at once, and those which afford a series of useful services before they are worn out. Food is an instance of the former category, houses of the second. This line of subdivision is one of the most fundamental in economic science. The price paid for an article of immediate consumption is, of course, the same as the price paid for the use of this article. This is not so in the case of an article belonging to the second category. The price paid for the single useful service it affords is one thing; the price paid for the article itself is quite another."[1]

2. Money considered as a medium of exchange is a fungible; it is a commodity whose use is exhausted for the owner of it when he has paid it in exchange for value received. It is not, under this respect, a commodity which is susceptible of repeated use by the same owner. Money, then, may be the matter of a contract of loan for consumption, and, if a sum of money be thus lent, justice requires that an equal sum be returned at the end of the term, and justice will not allow a greater sum to be exacted in return. For the whole value of the sum of money is the value it has for making exchanges, the value which it has in the first expenditure of it; and if,

[1] *The Nature and Necessity of Interest*, p. 86 (1903).

over and above the sum lent, a further sum were demanded for the use of the money, the same thing would be charged for twice over. An equal sum is due in return for the use of the money; a further sum would be a second payment for the same use. Thus when money is regarded merely as a medium of exchange a sin against justice is committed if an additional sum besides the principal is exacted for a loan; it is called the sin of usury, money unduly exacted for the use of money.

This is the reasoning of Aquinas,[1] and it seems as cogent to-day as it was in the thirteenth century. By this argument he defended the doctrine concerning usury which the Fathers and Doctors drew from Holy Scripture and tradition. Benedict XIV sums up the constant teaching of the Church on usury in his celebrated encyclical, *Vix pervenit.* There the Pope says: "The sin which is called usury consists in this, that from the loan for consumption (which of its own nature requires that only so much as was received should be returned) the lender desires more to be returned to him than the borrower received, and therefore contends that some gain, over and above the principal, is due to him merely on account of the loan. For whoever, when once a sum equal to the debt has been repaid, is not ashamed to exact something more from the borrower on account of the mere loan, which has been repaid by the equal sum, such a one stands convicted of acting against the obligation imposed by a loan for consumption, which requires equality between the sum lent and the satisfaction for it" (*cf.* Can. 1543).

This argument is valid when money is regarded as a means of exchange for articles of consumption and a measure of their value. Until modern times this was the chief function of money, but now we find that the above argument does not impress us with convincing force because in modern society money is not only a means of exchange for articles of consumption and a common measure of value, but also the most convenient form of storing capital. Within the last hundred or hundred and fifty years modern society has become capitalistic, and money is the chief form of capital. No wealth-producing object of importance can be undertaken without a supply of money, and money is now readily exchangeable for land, machinery, means of distribution, and other instruments for the production of wealth. Capital is one of the factors necessary for the production of wealth, and it is the chief instrument of its production. Money, then, looked

[1] *Summa*, 2-2, q. 78, a. 1.

upon as capital, is not a mere fungible; it is not a commodity which is consumed in the first use of it; it is the main instrument necessary for the production of wealth, and it thereby acquires a new function; it becomes virtually productive and puts on the nature of land and machinery, with which it is so readily exchangeable. Indeed, nowadays land can hardly put forth its natural productivity without the aid of capital, and machinery cannot be worked for the production of wealth without it. It follows, then, that nowadays money is not merely a means of exchange; it is also an instrument of production, and just as money may be charged for the use of land, or of a house, so money may be charged for the use of money. Money now has its fair and reasonable price like any other commodity, and the sin of usury is committed not by taking a fair and reasonable interest for a loan, but by exacting excessive interest. What is a fair and reasonable interest is a question whose solution depends upon circumstances, and, proximately, on the common estimation of intelligent men, like the fair and reasonable price of other commodities.

The foregoing seems to be the true solution of the old and much-disputed question of usury. It rests on historical facts and economic truths which are commonly admitted by modern theologians and economists, and it furnishes a satisfactory explanation of the changed attitude towards the taking of interest for money loans which the Church has adopted in modern times. Canon 1543 rests the title for taking moderate interest for money on positive law.

Although the use of money as capital was known in particular places and especially in centres of commerce in former ages, yet this use was exceptional and could not characterize money in general. The capitalistic function of money was of very gradual growth, and we have to wait till the latter part of the eighteenth, or the first part of the nineteenth, century before the capitalistic era was fully developed even in the most advanced nations of Europe. It may be well to quote one or two passages from economists of standing in proof of this. Dr. Cunningham writes: " In dealing with the Christendom of earlier ages we have found it unnecessary to take account of capital, for, as we understand the term in modern times, it hardly existed at all. In the fourteenth and fifteenth centuries we may notice it emerging from obscurity, and beginning to occupy one point of vantage after another, until it came to be a great political power in the State. . . .

It would be still more hopeless to try to treat the intervention of capital as an event which happened at a particular epoch, or a stride which was taken within a given period. It is a tendency which has been spreading with more or less rapidity for centuries, first in one trade and then in another, in progressive countries. We cannot date such a transformation even in one land; for though we find traces of capitalism so soon as natural economy was ceasing to be dominant in any department of English life, its influence in reorganizing the staple industry of this country was still being strenuously opposed at the beginning of the present century [the nineteenth]."[1]

The following is from Professor Cassel's book, *The Nature and Necessity of Interest:* " Interest paid for the use of capital, not for the use of money. . . . The question For what is interest paid ? was taken up again, a few years afterwards, and treated in the most successful way by the eminent French economist, Turgot. He rejects the old idea of a ' price of money,' and defines interest as the price given for the use of a certain quantity of value during a certain time—a formula never afterwards surpassed in clearness and definiteness. He shows how this price is fixed by demand and supply, and he gives special attention to the causes which govern the demand for capital. What he has to say on this subject is even in our days of the highest value, and should not be neglected by any serious student of the theory of interest. He puts capital—*i.e.*, the use of a certain quantity of value during a certain time—as a factor of production on the same line with the other factors."[2]

Thus historical fact and scientific explanation of the rise of the capitalistic age and the theory of interest on money as capital synchronize with the beginnings of the change in the Church's teaching on the lawfulness of interest on loans. In the year 1830 the Holy Office gave answer to a question of the Bishop of Rennes that confessors were not to be disturbed who absolved penitents in spite of their taking interest on money lent to merchants. Similar answers followed in quick succession, so that now there is no practical difficulty as to the lawfulness of taking moderate interest for money loans, though the Church has not yet formally settled the general question.

In England the usury laws, dating from Edward the Confessor, were repealed in 1854, owing to the prevalence of the

[1] *Western Civilization*, n. 114. [2] Page 20.

opinion that such laws were economically unsound and practically ineffectual. Experience, however, has shown that the rapacity of usurious moneylenders requires curbing, and the Moneylenders Act, 1900, empowered courts of justice to grant relief from any usurious bargain which, in the opinion of the court, was harsh and unconscionable.

Canon 1543 is as follows: "If a fungible be so given to another that it becomes his and afterwards as much is restored in the same kind, no gain can be received on account of the contract itself; but in the lending of a fungible it is not *per se* unlawful to make an agreement about the lawful interest, unless it is certain that it is immoderate, or even about a greater interest, if there be a just and proportionate title."

CHAPTER V

ON SALE

SALE is a contract by which the seller transfers the ownership of a certain commodity to the buyer in consideration of a fixed price. The English law on the sale of goods is different from that on the sale of real property, and so we will divide this chapter into two articles; in the first we will treat of the sale of goods, and in the second of the sale of realty.

As regards the alienation of ecclesiastical property see Can. 1530 ff.

ARTICLE I

On the Sale of Goods

1. The term *goods* includes all personal chattels other than things in action and money. It also includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.[1]

A contract of sale of goods may be made in writing, or by word of mouth, or partly in writing and partly by word of mouth, or it may be implied from the conduct of the parties. If the value of the goods sold be ten pounds or upwards, the contract cannot be enforced by action unless the buyer accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the contract or in part payment, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf. This is a rule of the external forum and does not affect the conscience.

2. The subject-matter of a contract of sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract of sale. The contract may be absolute or conditional. Whether a stipulation in a contract of sale is a condition, the breach of which may give rise to a right to treat the contract as repudiated, or a warranty the breach of which may give rise to a claim for damages but not to a right to reject

[1] Sale of Goods Act, 1893.

the goods and treat the contract as repudiated, depends in each case on the construction of the contract, and in the forum of conscience on the intention of the parties. In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is: (1) An implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass; (2) an implied warranty that the buyer shall have and enjoy quiet possession of the goods; (3) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made.

According to English law there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:

1. Where the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgement, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose, provided that in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.

2. Where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality; provided that if the buyer has examined the goods there shall be no implied condition as regards defects which such examination ought to have revealed.

But whatever may be the rules of law for the external forum, in the forum of conscience the contract will be invalid whenever on account of hidden defects the thing sold is substantially different from what the buyer thinks that it is, for then there is no consent in the same matter and the contract is void by natural law. If hidden defects only lessen the value of the thing, but do not make it substantially different from what it appears to be, the price should be accommodated to the value, but the seller is not bound to point out the defects to the buyer. If asked about them, the seller should make known even accidental defects, or say that he does not guarantee their absence.

3. By law the price may be fixed by contract, or may be left to be fixed in manner thereby agreed on, or it may be determined by the course of dealing between the parties. If no price is thus determined, the buyer must pay a reasonable price, and what is a reasonable price is a question of fact dependent on the circumstances of each particular case.[1]

In conscience, however, the price of things sold does not depend merely on the agreement of the parties. In contracts the equality which justice demands must be observed, and so in sale the price must be equivalent to the value of the thing sold. We do not mean the individual value in use to the buyer or to the seller, but the social or exchange value which the thing possesses. This value will be represented by what the law calls a reasonable price, and sometimes it is fixed by law, so that certain commodities and services have a legal price. In the Middle Ages there was a legal price for most of the articles of commerce, and theologians taught that there is an obligation in conscience to adhere to the legal price as long as the law is in force. In cases where the law has not determined the price, theologians teach that there is an obligation in conscience to adhere to the natural or common price of the commodity. This is not something purely subjective, much less is it purely individualistic; it depends upon supply and demand, upon the costs of production, the manner of sale, and on other factors. It is proximately determined by the common judgement or the common estimation of those who are best acquainted with all the factors which determine social value in the particular case. This is the famous theological doctrine of the just price of commodities, and it only needs to be properly understood to be appreciated as eminently practical and equitable. The just price of a commodity is not something which can be mathematically determined; it admits of a certain latitude, like everything that depends on a general moral estimate. Theologians distinguish the highest, the lowest, and the mean just price. The highest is that above which the commodity in question is not commonly sold, the lowest is that below which it is not commonly sold, and the mean is between the two. Justice will be observed if the price at which a thing is sold is not above the highest nor below the lowest at which the thing sells at the time and in the place in question. As a rule, market prices are just, because they are settled according to the common estimate of buyers and

[1] Sale of Goods Act, 1893, sec. 8.

sellers as to what are fair and reasonable prices under the circumstances.

Here theologians usually discuss a number of questions concerning the price of commodities in particular cases where there is special difficulty. In the case of rare or single objects, such as a first folio of Shakespeare, or a painting by a great master, or a winner of the Derby, where there is no market price, many theologians teach that no injustice is committed whatever be the price received from a buyer who acts with full freedom and knowledge. Fancy prices may be foolish, but they are not unjust. No difficulty is made by theologians in allowing one to sell at the current rate who has certain information of an imminent fall in price. A merchant may also buy things of value from uncivilized owners for trinkets. In the place and among the people concerned there is equality of value between merchandise and price. A seller is justified in asking a higher price—a price of affection the theologians call it—for what he cannot part with without more than ordinary pangs. The seller may not, however, charge for some special value in use which the thing sold has for the buyer. That belongs to the buyer, not to the seller, who cannot therefore sell it.

4. The following rules as to the transfer of property in the goods sold are given in the Sale of Goods Act, 1893:

Where there is a contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained. Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties, and the circumstances of the case.

Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer:

RULE I.—Where there is an unconditional contract for the sale of specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment or the time of delivery, or both, be postponed.

RULE II.—Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the

property does not pass until such thing is done and the buyer has notice thereof.

RULE III.—Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test, or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing be done and the buyer has notice thereof.

RULE IV.—When goods are delivered to the buyer on approval or "on sale or return," or other similar terms, the property therein passes to the buyer: (*a*) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction; (*b*) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

RULE V.—Where there is a contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made.[1]

Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer; but when the property therein is transferred to the buyer, the goods are at the buyer's risk, whether delivery has been made or not.

Provided that where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

5. As a general rule, the buyer acquires no better title to goods than the seller had, but where goods are sold in market overt, according to the usage of the market, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of the seller.[2]

Market overt in the country is only held on the special market-days provided for particular towns by charter or prescription; but in London every day, except Sunday, is

[1] Sale of Goods Act, 1893, secs. 16-18. [2] *ibid.*, sec. 22.

market-day. The market-place or spot of ground set apart for the sale of particular goods is also in the country the only market overt; but in the city of London every shop in which goods are exposed publicly to sale is market overt, for such things only as the owner professes to trade in. It is of the essence of the custom that the sale should be an open and public sale, so a sale in a salesroom and apart from the shop, or at a wharf, is not within it. Nor is sale by sample, the bulk sold not being exposed in the shop. Nor does the sale of horses come within the rule of market overt.

When the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

Where goods have been stolen and the offender is prosecuted to conviction, the property in the goods so stolen revests in the person who was the owner of the goods or his personal representative, notwithstanding any intermediate dealing with them, whether by sale in market overt or otherwise.

Notwithstanding any enactment to the contrary, where goods have been obtained by fraud or other wrongful means not amounting to larceny, the property in such goods shall not revest in the person who was the owner of the goods, or his personal representative, by reason only of the conviction of the offender.

Where a person having sold goods continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof to any person receiving the same in good faith, and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.[1]

6. In execution of the contract it is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions; that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

[1] Sale of Goods Act, secs. 23-25.

Whether it is for the buyer to take possession of the goods, or for the seller to send them to the buyer, is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, the place of delivery is the seller's place of business, if he have one, and if not, his residence, provided that if the contract be for the sale of specific goods, which to the knowledge of the parties when the contract is made are in some other place, then that place is the place of delivery.

Where, under the contract of sale, the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them; but if the buyer accepts the goods so delivered, he must pay for them at the contract rate.

Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he must pay for them at the contract rate.

Where the seller delivers to the buyer the goods he contracted to sell, mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties.[1]

Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.[2]

Notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law (*a*) a lien on the goods or right to retain them for the price while he is in possession of them; (*b*) in case of the insolvency of the buyer, a right of stopping the

[1] Sale of Goods Act, secs. 27-30. [2] *ibid.*, sec. 36.

goods *in transitu* after he has parted with the possession of them; (*c*) a right of resale as limited by the Sale of Goods Act.

Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and coextensive with his rights of lien and stoppage *in transitu* where the property has passed to the buyer.[1]

Article II

Sale of Real Property

1. In this article we will give certain general notions on the sale and purchase of real property, which is a very technical subject in English law. Our brief summary is derived from the *Encyclopedia of the Laws of England*, *s.v.* Vendor and Purchaser.

In general, any owner of any kind of estate and interest in land has power to sell it, and any person or corporate body legally capable of owning land has power to purchase it. This rule, however, is subject to the exceptions laid down above concerning the capacity to enter into a contract and to many others. Thus, by the Mortmain Act, 1888, a corporation has no power to purchase land otherwise than under the authority of a statute or of a licence from the Crown.

2. Besides the general conditions which are requisite for the formation of any contract, a sale of real property must be in writing signed by the party to be charged therewith; it is to some extent *uberrimae fidei*, and it is subject to certain special rules which are implied by law for the regulation of the contract and the duties of the respective parties under it.

3. When a valid contract for the sale of land has been entered into, its general effect on the legal position of the parties may be summed up as follows: The moment there is a valid contract for sale, the vendor becomes in equity a trustee for the purchaser of the estate sold, and the beneficial ownership passes to the purchaser, the vendor having a right to the purchase money, a charge or lien on the estate for the security of that purchase money, and a right to retain possession of the estate until the purchase money is paid, in the absence of express contract as to the time of delivering possession. As from the date of the contract the property sold is at the risk of the purchaser, who must bear all subsequent losses, and is entitled to all subsequent gains.

[1] Sale of Goods Act, sec. 39.

4. Under an open contract and in the absence of special stipulations to the contrary, the duties of the parties as regards completion may be summarized as follows:

(*a*) *Duties of the Vendor.*—(1) He is bound to both show and make a good title in accordance with the contract. (2) Upon being paid the purchase money and any interest upon it that may have become payable, the vendor is bound to execute, and procure the execution by all other necessary parties (if any) of, a proper deed of conveyance vesting the legal and equitable estate in the purchaser. (3) He must, in or concurrently with the conveyance, enter into proper covenants for title and sometimes into certain other covenants. (4) Upon completion he must hand over to the purchaser all title-deeds in his possession or power. (5) Upon completion possession of the property, if not already obtained, must be given by the vendor to the purchaser. (6) He must do all things necessary for completion within the time agreed upon, if time is essential, or otherwise within a reasonable time.

(*b*) *Duties of the Purchaser.*—(1) Correlatively with the first duty of the vendor above mentioned, the purchaser is bound to peruse the abstract when received, inspect the title-deeds produced, and make all objections and requisitions in due course. (2) He must prepare the conveyance and tender it to the vendor for execution. (3) Upon completion he must pay the persons properly entitled to receive it the purchase money and any interest upon it which may have become payable; and where equities or encumbrances exist of which he has notice, he is, unless the necessary parties capable of giving receipts concur, bound to see to the proper application of the purchase money. (4) He must pay to the vendor all proper costs and expenses incurred by the vendor, the liability for which is by law imposed upon the purchaser. (5) He must, upon completion, take possession of the property so as to relieve the vendor from all future liabilities incident to the ownership. (6) He must, like the vendor, do all things necessary for completion within the time agreed upon, or, if none, within a reasonable time.

Special rules for the alienation of Church property are laid down in the Code, Canons 534, 1530-1534, 2347.

CHAPTER VI

ON SALE BY AUCTION

1. AUCTION is a sale of property, whether real or personal, by which a person binds himself to transfer the ownership of the same to the highest bidder according to the conditions of sale. There are various methods in which the sale is conducted, and descriptions of the property to be sold and the conditions of sale are usually notified to the public by printed particulars of sale or by catalogues, and by the auctioneer himself. The bidding proceeds orderly, each bid being in the nature of an offer, which may be revoked until the auctioneer signifies his acceptance, usually by a stroke of his hammer. By this a contract is concluded with the last bidder, and the property becomes his. Ordinarily, however, the contract cannot be enforced by English law unless there is some memorandum of it in writing signed by the party to be charged therewith, or by his agent in that behalf.

2. Such a method of sale is, of course, honest and lawful if the conditions required either by the nature of the contract, or by law, or by special arrangement, be duly observed. The nature of the contract requires that, at any rate without notice, the owner himself should not bid, nor any other person on his behalf, and that the property should be knocked down to the highest bidder even if the price obtained be less than its value. The Sale of Goods Act, 1893, expressly provides that where a sale by auction is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person. Any sale contravening this rule may be treated as fraudulent by the buyer.[1]

However, in the next subsection the same Act also provides that a sale by auction may be notified to be subject to a reserved or upset price, and a right to bid may also be reserved expressly by or on behalf of the seller, and where a right to bid is expressly reserved, but not otherwise, the seller, or any one person on his behalf, may bid at the auction.

[1] Sale of Goods Act, 1893, sec. 58, subsec. (3).

Similarly, if all those who are present at an auction conspire together not to bid against each other, or if means are used to hinder people from bidding, injustice is committed. An agreement, however, between two persons not to bid against each other, when there are other bidders present, is not unjust or illegal, and *knockouts*, as they are called, are common, by which persons agree that only one of them shall bid for any particular article, and after the sale put up privately among themselves the goods that each one has bought.

CHAPTER VII

ON MONOPOLIES

1. A MONOPOLY in general is the exclusive right belonging to one or to a certain number to sell some commodity. A legal monopoly has its origin in the law, which sometimes reserves to the Government the right to sell some commodity or service, or grants the exclusive privilege of doing so to someone or to a certain number. Thus, in some countries the Government has a monopoly of salt or tobacco, as it has in England of the postal telegraph service. Copyright and patent right are private monopolies granted by law to an author or to the inventor of a patent. A natural monopoly arises from one or a few who band together and who are the owners of the sole source of supply of some commodity. When one or more capitalists obtain joint control over the sale of some commodity we have a capitalistic monopoly. The moral principles which govern the exclusive right to sell are applicable also to the exclusive right to buy, and we shall apply them to both in this chapter.

2. A legal monopoly is lawful provided that it does not militate against the common good. In England the Tudor sovereigns abused their privilege of granting monopolies, and the Parliament under James I made such grants illegal and void. Copyright, however, patent right, and certain other privileges of a monopolistic character, are recognized and protected by English law.

A natural monopoly, too, is of course lawful, but if the commodity or service which is thus monopolized is necessary or very useful for the common good, natural equity prescribes that the price demanded should be fair and reasonable, even if it be not regulated by positive law. If the subject-matter of the monopoly belongs to the class of non-necessaries and luxuries, as, for example, a mine of diamonds or rubies of special quality, it cannot be said that the price is fixed and determined by natural conditions, and the owner will be justified in taking any price that he can get without fraud or misrepresentation.

Even capitalistic monopolies of commodities or services

which are necessary or very useful to the community are not morally wrong if the prices charged are fair and reasonable, and if there is nothing reprehensible in the method of conducting business. The public may derive considerable advantages from these monopolies. They are capable of effecting great savings in the costs of production, advertising, distribution, and general management, and they may secure a large return on their capital and at the same time sell cheaply to consumers. They obviate, too, the wastes and the recurring depressions in trade which follow from unlimited competition.

3. Monopolies, however, are morally wrong when the prices demanded for necessary or useful articles of consumption are excessive, or when the methods of business are unjust, uncharitable, or generally unlawful. The prices will be excessive when much more than a fair return for the capital employed is obtained, after all the costs of production and distribution have been defrayed, and when as a natural consequence they are higher than would rule if there were no monopoly. When means are used to crush rivals in order to secure a monopoly, when bribery of public officials is practised to obtain from Government specially favourable laws or treatment, when discriminating rates are obtained from railways and other companies, when workmen are tyrannically and unjustly treated, when prices of raw material are unduly depressed and producers are robbed of a fair compensation for their toil and trouble, and in general, when fraud or force is used to accomplish the end in view, the methods of business are immoral, and monopolies which employ such methods are to be condemned.

If prices demanded by a monopoly are, in the estimation of prudent men, higher than are fair and reasonable, injustice is committed, and there is consequently an obligation to make restitution to the buyers who have been robbed. If the prices charged are not altogether unfair and unreasonable, but high, and above what in the circumstances would be considered moderate, there will be a sin committed against charity, in that private advantage has been unduly pursued to the detriment of the people, who have been compelled to pay higher prices for the enrichment of the monopolists.

From what has been said, it is clear that what are called " rings " and " corners " in wheat, cotton, and other such commodities, are morally wrong, in that they cause the financial ruin of many people, and produce wide distress and instability

of trade. Trusts, too, and combinations in trade are full of danger for the community. They wield immense power, and the temptations to abuse it, especially as a company has no conscience, as the saying is, are too great for the common run of business men. It is well that the Government should have the right of examining and inspecting the affairs of such bodies, and of applying the necessary remedies in case of abuse.

CHAPTER VIII

ON BAILMENT

1. BAILMENT is a contract by which the possession of chattels is delivered by one person (the bailor) to another person (the bailee) either to be delivered by the bailee to a third person or to be redelivered to the bailor when the purpose of the bailment is at an end.

According to the common enumeration there are six kinds of bailment—*depositum*, *commodatum*, *locatio et conductio*, *vadium*, *locatio operis faciendi*, and *mandatum*. Of these *depositum* and *mandatum* are for the benefit of the bailor alone, and the bailee is liable only for gross negligence in the performance of his duty. *Commodatum* is for the sole benefit of the bailee, who is therefore liable for even slight negligence. The other kinds are for the benefit of both bailor and bailee, and the bailee will be liable for ordinary neglect. The foregoing degrees of negligence are required by law to make the bailee liable, but by express agreement he may bind himself to more or less care, and then he will be held liable accordingly. Moreover, when a bailee possesses any special skill, the omission to use that skill in the execution of the trust committed to him will be imputed as gross negligence even if he derived no benefit from the bailment.

2. A deposit is a bare naked bailment of goods delivered by one man to another to keep for the use of the bailor without reward. The depositary in general is not allowed to use the deposit, for it is given to him to keep for nothing; he is bound to exercise the same care of the deposit as he does of his own goods, but he will only be answerable for gross neglect.

3. A mandate is the delivery of goods or chattels to somebody who is to carry them or do something about them gratis. The mandatary, like the depositary, is liable only for gross neglect, but if his situation or profession is such as to imply skill, the failure to use that skill will be imputable as gross neglect.

4. A loan is the lending of goods or chattels to another to be used by him gratis. As the borrower obtains the use of the thing lent for nothing he will be answerable for even slight

negligence, and he is not justified in using it for a longer time or for other purposes than was agreed upon. He is not responsible for reasonable wear and tear. The lender on his side is responsible for defects in the chattel with reference to the use for which he knows the loan is accepted, of which he is aware, and owing to which directly the borrower is injured.

5. In the contract of hiring where goods are lent to a person in consideration of payment, the hirer is bound to use ordinary care of them such as a prudent man would take of his own goods, and he will be responsible for ordinary negligence.

6. Pawn or pledge is a contract by which goods or chattels are delivered to another to be security to him for money borrowed of him by the bailor. The pawnee must use ordinary diligence in the custody of the pledge which he is not permitted to make use of except when its keep entails expense, as in the case of a horse, and then the pawnee may make reasonable use of it so as to indemnify himself for its keep.

The pawnee may recover his debt by giving notice to the pawner that he will sell the subject of the pledge, or he may sue for his debt, or if he pleases he may adopt both remedies. A pledge differs from a *lien* in that this only gives the right to retain property, and from a *mortgage* of personal estate which passes the actual property in the goods to the mortgagee.

Pawnbrokers form a special kind of pawnees, but although transactions dealing with loans above ten pounds are governed by the common law, loans of ten pounds and less are subject to the Pawnbrokers Act, 1872. By this Act every pledge must be redeemed within twelve months from the day of pawning, with seven additional days of grace. If a pledge is not redeemed within that time, and the amount for which it was pledged does not exceed ten shillings, it becomes the absolute property of the pawnbroker; if it was pledged for above ten shillings, it may be redeemed until actual sale, and such sale must be by public auction, and the surplus after the costs of the sale and the amount of the pledge and interest must be accounted for.

The pawnbroker is made liable for loss in case of fire, against which he may protect himself by insurance, and he may treat the person who produces the pawn-ticket as entitled to redeem the pledge.

7. The last species of bailment is a contract by which goods or chattels are delivered to be carried, or something is to be done about them for a reward to be paid by the bailor to the bailee. With regard to the liability of such bailees a distinc-

tion is made between persons exercising a public employment, such as public carriers, and private persons. The former are responsible for all losses except such as happen through the act of God and the King's enemies. The latter are only bound to exercise the reasonable care which is to be expected from a skilled storekeeper acquainted with the risks to be apprehended; and this care must be shown not only in obviating the risks, but in taking all proper measures for the safety of the goods or of a portion of them when the risks have occurred. There are special laws which govern the liability of railway companies and innkeepers.

CHAPTER IX

ON PRINCIPAL AND AGENT

1. A CONTRACT of agency arises where one person, called the principal, authorizes another, called the agent, who accepts the charge, to represent him, or act on his behalf, and undertakes to be answerable for what that other does within the scope of his authority.

This contract, like others, requires the mutual consent of the parties to it, and that consent may be express or implied in their actions and course of dealing. Thus not only is a wife the agent of her husband for the purpose of supplying herself with necessaries, but a woman with whom a man cohabits occupies the same position as long as the cohabitation continues. Indeed, agency may be constituted by ratification of acts done on behalf of another even without previous authorization. No special formality is required in appointing an agent except in the case of a corporation, or where the agent is authorized to execute a deed on behalf of the principal, in which case the appointment must be by deed.

Whatever a person may do by himself he may appoint an agent to do for him, *qui facit per alium facit per se;* and anyone of sound mind may be appointed an agent, even one who, like a minor, cannot enter into legally binding contracts for himself. An agent cannot delegate his authority to another, for *delegatus non potest subdelegare.*

Agency is of different kinds, universal, general, or special. A universal agent is empowered to do any acts on behalf of his principal; a general agent is empowered to do all acts in some particular trade, business, or employment; a special agent is authorized to do some particular act for the principal; a *del credere* agent engages to be responsible to his principal for the purchase money of goods sold by him.

2. The rights and duties of principal and agent between themselves are settled by their intention as manifested or implied in the contract which they have concluded. In default of express or implied agreements to the contrary the duties of the agent implied by law are: to perform the contract of agency; to observe the limits of his authority and the

instructions given him by the principal, as also the customs and usages of the business in which he is employed; in all things left to his discretion to act with the most perfect good faith in the interest and for the benefit of his principal; to exercise due skill, care, and diligence, according to the nature of the business entrusted to him and the terms of the agency; to keep the money and property of his principal separate from his own; to pay over to the principal all moneys received to his use, and to account to him for all secret profits and commissions. No agent is allowed to enter into any transactions in which he has a personal interest at variance with his duty to his principal or from which he obtains any personal benefit or profit, except with the consent of the principal; and any secret commissions or profits which he acquires are considered as received for the principal's use. This rule of law is just, and it should be adhered to when the agent obtains a fair and equitable remuneration for his services from the principal. It is obvious that the agent may keep secret commissions which he receives from others with the express or implied consent of his principal, and he may be excused in conscience if he retains for his own use the fruits of special and extraordinary diligence which he was not bound by his contract to employ, together with gifts and presents made to him personally to secure or retain his custom, provided that the interests of his principal in nowise suffer in consequence.

The principal on his part is bound to pay a fair remuneration to the agent for his services, to accept the obligations lawfully entered into by the agent in his behalf, and to indemnify him for all expenses and losses that he has incurred in the course of his agency.

3. Even if a universal or general agent exceeds his authority in a particular instance, yet the principal will be liable if the act came within the agent's ordinary authority. This is not the case with a special agent, for in this case it is the duty of those who contract with him to satisfy themselves as to the extent of his powers.

As a general rule, the agent incurs no personal liability, for he acts on behalf of his principal, who alone is bound. Contrary to the general rule, the agent will be liable when he conceals his principal, or when he acts without authority, or when he exceeds that authority and fraudulently misrepresents its extent, or when he specially binds himself, though acting as an agent. When the fact of agency is not known, or when the agency is known but the principal is not disclosed, the

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As a general rule, the agent incurs no personal liability, for he acts on behalf of his principal, who alone is bound. Contrary to the general rule, the agent will be liable when he conceals his principal, or when he acts without authority, or when he exceeds that authority and fraudulently misrepresents its extent, or when he specially binds himself, though acting as an agent. When the fact of agency is not known, or when the agency is known but the principal is not disclosed, the

principal, on being discovered, is held liable as well as the agent. In law, but not in conscience, the principal is liable for the fraud and wrong committed by the agent within the limits of his authority even without the sanction of the principal.

4. A contract of agency is determined by the death of the principal, by the revocation by the principal of the agent's authority, by the agent's renunciation of office with the principal's consent, by the principal's bankruptcy, by the effluxion of time, and by the fulfilment of the object for which the agency was created.

CHAPTER X

ON PARTNERSHIP

1. PARTNERSHIP is defined to be the relation which subsists between persons carrying on a business in common with a view to profit. Business here includes every trade, occupation, or profession. The partners collectively are called a firm, and they carry on business under the firm name.

In general, all persons are capable of entering into partnership, and no special formality is required for the purpose; it may be done by word of mouth, or inferred from the conduct of the parties. By English law not more than ten persons may form a partnership for carrying on a banking business, and not more than twenty for other purposes.

2. Every member of a firm is an agent of the firm and of the other members for doing any act which is necessary for the carrying on of the business of the firm in the usual way. The partners may indeed agree among themselves to restrict this power with reference to one or more of their members, and this agreement will be upheld and will excuse the firm from liability for the acts of those members against the claims of all who had notice of the agreement. Unless otherwise provided by the partnership articles, any member as agent of the firm has implied authority to receive and give receipts for debts due to the firm, to draw cheques on the firm's bankers in the firm name, to purchase on the credit of the firm goods required for carrying on its business in the usual way, to sell the goods of the firm, to engage servants for the business of the firm, and to borrow money on its credit. In order that the firm may be liable for these and other acts of a member, it is necessary that they should have been done by him in the firm's name as agent, not as principal and in his own name.

As a principal is liable for the fraud and wrongdoing of his agent in the course of his agency, so is the firm liable for the fraud and wrongs done by a member in the ordinary course of the business of the firm. The members of the firm are jointly liable for the debts and obligations incurred by it, and the property of a deceased member is liable also severally, but not until the separate debts of the deceased have been paid.

3. The relations of the partners between themselves may be determined by special agreement, but in the absence of such special agreement every partner is entitled to share equally in the profits of the business, and he must contribute equally to its losses. This remains true in the absence of agreement to the contrary even if the partners contributed unequal shares to the capital of the firm. Every member has a right to take part in the business of the firm, to express his views about the conduct of its business, and no change may be made without all being consulted. In case of disagreement, the majority decides. Partners are bound to observe the utmost good faith in their dealings with one another, to work for the benefit of the firm, and in the conduct of the partnership business they may not obtain private advantage at the firm's expense.

4. A partnership may be dissolved by effluxion of time, by mutual consent, by the death of a partner, by the bankruptcy of a partner, by a judgement of the Chancery division of the High Court of Justice which may be obtained on several grounds. After dissolution, the authority of each partner to bind the firm ceases, except in so far as is necessary to wind up the affairs of the firm.

CHAPTER XI

ON LEASES

1. A LEASE is a contract transferring a right to the possession and enjoyment of real property usually made in consideration of the payment of a periodical compensation called rent.

A lease may be for life, or for a fixed period, or from year to year, or at will or sufferance. It is provided by the statute of frauds that "all leases, estates, interests of freehold, or terms of years, or any uncertain interest of, in, to or out of, any messuages, manors, lands, tenements, or hereditaments made or created by livery and seisin only, or by parole, and not put in writing, and signed by the parties so making or creating the same, or their agents thereunto lawfully authorized by writing, shall have the force and effect of leases or estates at will only, and shall not, either in law or equity, be deemed or taken to have any other or greater force or effect, any consideration for making any such parole leases or estates, or any former law or usage to the contrary notwithstanding. Except, nevertheless, all leases not exceeding the term of three years from the making thereof, whereupon the rent reserved to the landlord during such term shall amount unto two third parts at least of the full improved value of the thing demised." So that a lease by parole can only be made when the period does not exceed three years and the rent is at least two-thirds of the value. Furthermore, by the 8 & 9 Victoria, c. 106, every lease required by law to be in writing, and assignments of leases, are void at law unless made by deed. It is also provided by the Statute of Frauds that any agreement for a lease for however short a period must be in writing.

Although a lease, which by law should be in writing and is not, has by the statute the effect of only an estate at will, yet if a tenant enters and pays rent under such a lease, it may serve as a tenancy from year to year. If a tenant holds over after the expiration of his lease and continues to pay a yearly rent, he will hold under the terms of the lease as far as they are applicable to the new tenancy from year to year.

A yearly tenant must give and is entitled to a reasonable notice to quit, which has been held to be six months, ending

at the period at which his tenancy commenced. A year's notice is required when the tenancy is held under the Agricultural Holdings Act, 1883. To determine a monthly or a weekly tenancy a notice of a month or a week respectively should be given.

2. The tenant is always bound to use the premises leased to him in a tenantlike or husbandlike manner. In leases for a longer period it is usual to covenant as to whether repairs shall be done by landlord or by tenant. In tenancies from year to year the tenant is under no obligation to make substantial repairs in the absence of express agreement to that effect, nor is he bound to make good accidental damage by fire or other cause, nor ordinary wear and tear; but he must repair losses caused by his own negligence, and he must keep the premises wind and water tight. The general rule is that all rates and taxes are to be paid by the tenant; property tax, land tax, and tithes are exceptions, and are paid by the landlord. Fixtures, or things affixed to the freehold by the tenant, at common law became the property of the landlord, according to the maxim, *quidquid plantatur solo, solo cedit.* The common law rule, however, has been much mitigated, and now, in general, fixtures erected for the purposes of trade, ornament, or domestic use, and also agricultural fixtures, may be removed by a tenant. In certain cases, before doing this, due notice must be given to the landlord.

The landlord has a right to enter and seize goods belonging to the tenant in payment of rent which is due to him but which has not been paid.

CHAPTER XII

ON INSURANCE

1. THERE are three different types of this contract—marine, fire, and life insurance. Marine and fire insurance are contracts of indemnity by which the insurer undertakes to make good any loss suffered by the insured through the happening of some accident, in consideration of the payment of a fixed sum at once or at periodical intervals. On the other hand, in a contract of life insurance the insurer undertakes to pay a given sum to another upon the happening of a particular event contingent upon the duration of human life in consideration of the immediate payment of a smaller sum or certain equivalent periodical payments. The particulars of the contract are set forth in a formal document called the *policy*, but the contract is made so as to bind the parties on the payment by the insured of the premium—*i.e.*, the money charged or an instalment thereof.

Usually insurance business is conducted by companies which frequently effect reinsurance with other companies, so that losses are spread over greater numbers and are more easily borne. In marine insurance individuals called *underwriters* frequently contract to indemnify the insured by subscribing the policy and putting opposite to their name the amount to which they will be personally liable in case of loss.

A man may effect an insurance with many companies, but as marine and fire insurance are contracts of indemnity, the insurer cannot get more than is sufficient to cover the loss, and if one company has paid the whole of this, it will be able to recover proportionate sums from the other companies with which the party was insured. Any person may insure his own life to any amount he thinks fit by paying proportionate premiums, but no one can insure the life of another unless he have a pecuniary interest in that life, and only to the extent of that interest. A wife has such an interest in her husband's life, and may effect an insurance on it for her own benefit.

Marine and life insurance policies may be assigned to others, but notice of assignment must be given to the party bound by the policy.

2. Contracts of insurance are *uberrimae fidei*, and therefore require that all circumstances that are material to the contract should be made known to the insurer in order to enable him to come to a sound judgement as to the risks and the merits of the case. Questions are proposed to one who desires to effect an insurance, to which truthful answers must be given. Warranties and conditions, express and implied, are also part of the agreement. If the questions in the proposal are answered falsely, or if the warranties or conditions are not fulfilled, or if any material circumstance is not disclosed when it should be to the insurer, the latter may void the contract. It is difficult to say when, according to law, the contract is null and void so as to confer no rights in the foregoing circumstances even before the insurer has used his right to avoid the contract. In conscience it would seem that we may adopt the distinction here between what theologians call substantial and accidental mistake. That will be substantial to the contract which would have prevented the insurance being effected at all if it had been known; if it would not have prevented the insurance being effected but only varied its terms, it will be accidental. A substantial defect in the contract will make it null and void so as to transfer no rights at all; accidental defects will leave the contract valid, but there may be an obligation to supply the defect, as, *e.g.*, by paying a larger premium corresponding to the greater risk or more advanced age. A usual condition is that the policy of life insurance is avoided if the insured should die by his own hand. The purpose of this condition is to prevent a man gaining advantage by his own felonious act. So that if no advantage would accrue to the party, the policy may be saved in the absence of express condition to the contrary, as also if the insured committed suicide while of unsound mind.

If the premiums are not regularly paid at the proper time, the policy lapses, and the paid-up premiums are forfeited to the insurer. In such cases the policy may sometimes be revived on comparatively easy terms.

CHAPTER XIII

ON GAMING AND WAGERING CONTRACTS

1. In this chapter we will treat of certain contracts which depend for their effect of profit or loss upon some uncertain event.

A lottery is a distribution of prizes by lot or chance. Those who take part in a lottery ordinarily pay down a smaller sum of money in consideration for the chance of obtaining a larger sum or something of greater value, but it may happen that they lose by the transaction. The event is settled by the casting or drawing of lots in some form or other. English municipal law now prohibits lotteries where the distribution of prizes depends on mere chance, not on art or skill. The prohibition does not affect art unions carrying on business under a royal charter or under a constitution and rules approved by the Privy Council; but it does affect distributions of prizes on art union principles by persons other than art unions. However, inasmuch as a lottery is nothing more than the purchase of an uncertain chance, it is not necessarily unjust or in any way contrary to the natural law. If there is no fraud connected with the drawing of lots or the distribution of the prizes, and if the sum paid by those who take part in the lottery is to some extent proportionate to the chance of winning a prize and to its value, a lottery will be lawful as far as conscience is concerned, for the municipal law in these matters is penal.

2. Gaming is playing at any game, sport, or pastime for money or anything of value which is staked on the result of the game, so that it is lost or won according to the success or failure of the person who staked it.

Clerics are forbidden, as we shall see, to play at games of pure chance with scandal to others and loss of their own time. English law also makes all gaming contracts null and void so that they cannot be enforced in English courts of justice.

But here we consider the question not as affected by positive law, ecclesiastical or civil, but as it is in itself. Is gaming in itself morally wrong?

Apart from abuse, to play games of skill or even of pure

chance for a stake is not immoral. I may spend my money in moderation on recreation, or I may make a present of it to others if I choose. There is nothing immoral in agreeing to hand over a sum of money if I am beaten in a game either of skill or of chance. This perfectly lawful action will, however, become unlawful if one of the parties is compelled to play against his will, or if cheating and fraud are practised in the game, or if there is no chance of success on the part of one of the players (unless he knows this and freely consents to play in spite of it), or if the parties have not the money which they stake or at any rate not the free disposal of it on account of its being required to pay their debts or to support themselves and their families.

Moreover, although gaming in itself and under the conditions which have just been laid down is not immoral, yet it is a dangerous pastime for many, and easily leads to abuse, sin, and ruin. Especially is this the case when gambling is carried on in houses kept for the purpose, where all kinds of bad characters congregate. The keeping of such dens of iniquity is rightly punished by the law.

3. Wagering or betting is the making of a contract on an unascertained event, past or future, by which the parties are to gain or lose, according as the uncertainty is determined one way or the other.

Wagering contracts in general are not enforceable in English courts of law, although there are some exceptions to the rule, but here we consider the matter from the point of view of conscience.

To make a bet is not sinful provided that the subject-matter of the wager is not sinful nor an incentive to sin, provided that the event is really uncertain for both parties, and provided that both understand the bet in the same way and are prepared to stand by the event and pay in case of loss. Even if one of the parties is certain as to the truth of the matter in question and he makes this known to the other, if the latter chooses to persist in his contention and stakes his money, the other will be justified in taking it.

What was said above about gambling is applicable also to betting. Although it is not sinful to stake a moderate sum of money of which one has the free disposal on some unascertained event under the conditions laid down above, yet a strong and dangerous habit may easily be formed by indulgence in the practice, and then sin, misery, and ruin to self and others are not far off.

There are certain modes of gambling which are practised now on money and produce exchanges. Dealings in " futures " and " options " and " time bargains " are for the most part merely speculative transactions, and do not differ essentially from betting as to what will be the price of stock or of some commodity at a future date. " Rigging the market " and similar devices are means employed by operators to influence the market in their own favour. These means are, of course, unjust, and besides inflicting loss on competitors, they do great harm to outsiders by disturbing the natural prices of commodities, and not infrequently produce irreparable and far-reaching ruin.

BOOK VIII

ON THE COMMANDMENTS OF THE CHURCH

WE saw in the book on Laws that the Church has received power from God to make laws which bind all her children, and that she alone has authority to regulate all matters pertaining to the worship of God and the salvation of souls. The Catholic Church has exercised the power entrusted to her and imposed certain laws and precepts on the faithful. According to the Catechism the chief of these are six in number:

1. To keep the Sundays and holy days of obligation holy, by hearing Mass and resting from servile work.

2. To keep the days of fasting and abstinence appointed by the Church.

3. To go to confession at least once a year.

4. To receive the Blessed Sacrament at least once a year, and that at Easter or thereabouts.

5. To contribute to the support of our pastors.

6. Not to marry within certain degrees of kindred, nor to solemnize marriage at the forbidden times.

The last of these will be best explained when we come to treat of marriage; the other five will form the subject of the following chapters.

CHAPTER I

ON KEEPING CERTAIN DAYS HOLY

1. WHAT pertains to the obligation of hearing Mass and abstaining from servile work on Sundays and holy days of obligation has been already explained under the Third Commandment of the Decalogue. It only remains to add a few observations to what was there laid down.

Before Urban VIII issued his Bull *Universa*, September 13, 1642, various feasts were kept as of obligation in different countries. For the purpose of introducing greater uniformity, Urban VIII drew up a list of feasts which were everywhere to be observed and besides which no others might be observed without the sanction of the Pope. Besides all the Sundays of the year, the list contained the following feasts: Christmas Day, the Circumcision, Epiphany, Resurrection and two following days, the Ascension, Whit Sunday and two following days, the Holy Trinity, Corpus Christi, Finding of the Cross, the Purification, Annunciation, Assumption, and Nativity of the Blessed Virgin; the Dedication of St Michael, the Nativity of St John the Baptist, SS Peter and Paul, St Andrew, St James, St John, St Thomas, SS Philip and James, St Bartholomew, St Matthew, SS Simon and Jude, St Matthias; St Stephen, St Sylvester, St Joseph, St Anne, the feast of All Saints, and one of the principal patrons in each kingdom or province, and another principal patron in each city, town, or village, where such are venerated.

In most countries the number of these feasts has been greatly reduced, and in England they have been reduced to eight by decrees of the Sacred Congregation of Propaganda dated March 9, 1777, and May 17, 1830. Those eight are: Christmas Day, the Circumcision or New Year's Day, the Epiphany, the Ascension of our Lord, Corpus Christi, SS Peter and Paul, the Assumption of our Lady, and All Saints. The suppressed feasts are still observed as days of devotion.

As in England we had no patrons such as those whose feast was to be observed according to the Bull of Urban VIII, by a decree dated May 24, 1863, Pius IX granted permission for the name of St George to be inserted in the prayer *A Cunctis* at Mass, and for a commemoration of St George to be made in place of that of the patron among the suffrages of the saints in the Office. By a decree S.R.C. (December 2, 1891 [n. 3758]), regulars may add the name of their saintly founder as well. In Ireland the feast of St Patrick is celebrated as the feast of the patron and as a day of obligation in addition to those observed in England. In the United States the following are the holy days of obligation: Christmas Day, the Circumcision, the Ascension, the Assumption, the Immaculate Conception of our Lady, and All Saints.

Canon 1247 is as follows: " The festival days of obligation in the Church universal are these only: Each and all Sundays,

the feasts of the Nativity, Circumcision, Epiphany, Ascension, and Corpus Christi, of the Immaculate Conception and Assumption of Blessed Mary Mother of God, of St Joseph her Spouse, of the Blessed Apostles Peter and Paul, and finally of All Saints."

The feasts of the Immaculate Conception and of St Joseph have not so far been introduced in England.

CHAPTER II

ON FASTING AND ABSTINENCE

1. THERE are various reasons why the Church bids Catholics to fast and abstain from flesh meat on certain days. By these means we more easily keep our lustful appetites in due subjection and we do penance for our sins. There are certain devils, which, as our Lord taught us, are only cast out by prayer and fasting. Moreover, by denying and curbing our appetites we exercise ourselves in the virtue of temperance, and, like soldiers on parade, we accustom our lower nature to obey the command of reason, so that it may not betray us when we are in presence of the enemy in time of temptation.

2. Considerable changes were introduced into the law of fasting and abstinence by the new code. According to Canon 1250:

"The law of abstinence forbids the eating of flesh meat and of soup made from flesh meat, but not eggs, milk, cheese (*lacticinia*), nor any condiments even from the fat of animals."

The flesh of animals that are born on land and that breathe is forbidden, as also soups made from this flesh and extract of meat. Fish, oysters, turtle, crab are not forbidden, and in some places certain aquatic birds are allowed by custom. Suet is classed as flesh meat, but the rendered fat of animals, butter, milk, cheese, and eggs are allowed.

3. This precept binds under pain of grave sin, but a violation of it would not be a mortal sin unless an appreciable quantity of unlawful food were taken. Theologians are not agreed on what quantity is necessary to constitute grave matter, but, in the opinion of some, two ounces would be necessary and sufficient.

4. All Catholics who have come to the use of reason are as a general rule subject to the precept of abstinence as to other positive laws of the Church. However, inasmuch as positive laws do not bind when they could not be observed without relatively serious inconvenience, those who are sick, or are recovering from illness, or those who are in weak health and cannot take abstinence fare, are excused from observing this precept, and may eat meat on days of abstinence. Children, too, of negligent Catholic parents who do not observe the

law, Catholic servants in bigoted Protestant families who cannot get such food as the Church allows on days of abstinence, and must fast unless they eat meat which is put before them, may lawfully do so. Dispensations also from the obligation of abstaining may for good reason be obtained from the Bishop or from the priest.

The superiors of Religious Orders have the same powers as Bishops with regard to their own religious subjects. Ordinarily these can only dispense in particular cases or families, but on account of some great concourse of people or of public health, Ordinaries can now dispense in the law both of fasting and abstinence (Can. 1245, sec. 2, 3).

5. According to Canon 1251: "The law of fasting prescribes that only one full meal be taken in the day; but it does not forbid the taking of some food in the morning and in the evening, nevertheless the approved custom of the place must be kept with regard to the quantity and quality of food. Nor is it forbidden to mix flesh meat and fish in the same meal, nor to change the evening collation with dinner."

The law of fasting, then, prescribes that only one full meal may be taken in the day, and that after twelve o'clock midday. Solid food, not drink, is limited by the law of fasting, but very nutritious liquids, such as milk, soup, thick chocolate, are classed as food. Custom sanctions the taking of about two ounces of dry bread with tea, coffee, or thin chocolate at breakfast, and about eight ounces of lighter sorts of food in the evening at collation. If it is preferred the collation may be taken after midday and the full meal in the evening.

According to Canon 1252: "The law of abstinence alone is to be observed on every Friday.

The law of abstinence and fasting also is to be observed on Ash Wednesday, on the Fridays and Saturdays of Lent, and on the Wednesdays, Fridays, and Saturdays of Ember Week, on the vigils of Whit Sunday, the Assumption, All Saints, and Christmas Day.

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The Holy See has dispensed English and Scotch Catholics from abstinence except during Lent, on the Saturdays of Ember Week, and on those vigils which immediately precede or follow Friday or another day of abstinence.

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The Holy See has dispensed English and Scotch Catholics from abstinence except during Lent, on the Saturdays of Ember Week, and on those vigils which immediately precede or follow Friday or another day of abstinence.

6. It is special to the law of fasting that it only binds the faithful after they have attained the age of twenty-one until they enter upon their sixtieth year. It binds under pain of grievous sin, which may be committed not only by taking more than one full meal in the day according to what has just been said, but also by taking food at frequent intervals in small quantities, for thus the total amount would be considerable. When one who is bound to fast has already taken two full meals, he has broken his fast, and the law no longer binds him. Whereas the law of abstinence is broken, and sin is committed, as often as the prohibited act is done.

7. Though all who have reached the age of twenty-one are *per se* bound to fast, yet as a matter of fact many are excused on the ground of impossibility, work of importance which cannot be omitted without serious inconvenience and which cannot be done if fasting is observed, and dispensation.

Not only hard bodily labour in the fields, mines, workshops, or mills, but severe mental work such as teaching, continual preaching, or hearing confessions, excuses from the precept of fasting. The sick, convalescents, and those in delicate health are also excused. Even though the difficulty of fasting and at the same time of doing one's work is sometimes not sufficient of itself to excuse one from fasting, it will be sufficient for obtaining a dispensation, which may be given not only by the Pope, but by the Bishop, one's religious superior, or by the parish priest.

CHAPTER III

ON ANNUAL CONFESSION

As the Council of Trent teaches, there is a divine law which prescribes that all who fall into grievous sin after receiving Baptism should confess such sin to a priest and receive absolution for it from him. This divine precept is contained in the institution of the sacrament of Penance, and will best be explained when we come to treat of that sacrament. Here we have to do with a positive ecclesiastical law which supposes the divine law, but further determines it according to time and the person to whom the confession is to be made. The divine law does not determine any precise time for making the confession nor does it limit the choice of confessor. This was done by the Fourth Lateran Council, c. 21: "Let all the faithful of both sexes after they have come to years of discretion faithfully confess all their sins in private at least once a year to their own priest, and do their best to perform the penance which he shall enjoin them."

It is the common opinion of theologians that this law only affects those who have fallen into mortal sin, so that although venial sin may be confessed and affords sufficient matter for sacramental absolution, yet there is no law, human or divine, which imposes any obligation on the faithful in general to confess venial sins. The divine law does not do this, as the Council of Trent explains (sess. 14, c. 5), and the Lateran law only determines the divine law.

One's own priest, according to the modern discipline of the Church, is any priest who has faculties for hearing confessions in the place where they are made. To satisfy the precept it is not sufficient merely to make one's confession; it must be made fruitfully, so as to merit absolution and reconciliation with God.[1]

No special time within the year is mentioned by the council, and various methods of reckoning the year would satisfy its

[1] Prop. 14, condemned by Alexander VII.

requirements; but as Easter time is assigned for the annual Communion which is also prescribed, in practice the two precepts are fulfilled together within the time appointed for the Easter duties. If one has neglected to go to the sacraments within the prescribed time, he is not free for a further term, but he should go as soon as he can (Can. 906, 907).

CHAPTER IV

THE EASTER COMMUNION

1. THERE is also a divine precept to receive Holy Communion: "Except you eat the flesh of the Son of man and drink his blood you shall not have life in you."[1] But no special time was assigned by our Lord for the fulfilment of this precept; he left all such matters to be determined by the Church. The Fourth Council of the Lateran, therefore, made the universal law that all the faithful, after coming to years of discretion, should reverently receive the holy Eucharist at least at Easter, unless it be deemed advisable to abstain for a time for some reasonable cause.[2]

2. Canon 859 of the new code repeats the words of the Lateran Council and interprets the words "years of discretion" as "coming to the use of reason," so that children become subject to this law after completing their seventh year. This obligation, as far as it affects those under the age of puberty, falls chiefly on those who have care of them—that is, on their parents, guardians, confessor, teachers, and parish priest (Can. 860).

The Easter Communion should be made during the fortnight from Palm Sunday to Low Sunday, but local Ordinaries can anticipate the time from the fourth Sunday of Lent or prolong it to Trinity Sunday.

The faithful are to be exhorted to fulfil this precept in their own parish church, and if they fulfil it in another parish they should inform their parish priest.

In England the time for fulfilling the Easter duties is still from Ash Wednesday to Low Sunday.

In the United States the time for fulfilling the Easter precept is from the first Sunday in Lent till Trinity Sunday; in Ireland it extends from Ash Wednesday to the octave day of the feast of SS Peter and Paul.

This precept is not fulfilled by a sacrilegious Communion, and if it has not been complied with at the proper time the obligation still remains, and should be discharged as soon as the occasion offers.

Other matters concerning Holy Communion will be treated when we come to the Sacraments.

[1] John vi 54. [2] Can. 21.

CHAPTER V

ON SUPPORTING ONE'S PASTORS

1. " KNOW you not," says St Paul, " that they who work in the holy place eat the things that are of the holy place; and they that serve the altar partake with the altar? So also the Lord ordained that they who preach the gospel should live by the gospel."[1] As, then, there was special provision made by God for the support of the priests and the maintenance of religion under the Old Law, so under the New Law our Lord commanded that his ministers should be supported by those to whom they ministered. The faithful, then, are bound by divine precept to contribute according to their means to the support of their pastors.

The method of fulfilling this duty has varied at different times; nowadays, at least in English-speaking countries, the offerings of the faithful are almost the only source of church revenue, as they were in the first ages of Christianity. The Church urges this divine precept and further determines it either by universal law or by provincial and diocesan regulations.[2]

2. Ministers of religion have a right in justice to decent support, for from the fact that they are put by lawful authority in spiritual charge of a parish or mission, the people under their care are bound by an implicit contract to support them, just as citizens are bound to support temporal rulers, magistrates, and officials.[3]

The obligation, then, to support one's pastors is grave, but it is difficult to determine when mortal sin is committed in particular cases by failing to comply with this duty. Much depends on the degree of necessity in which a pastor is placed, and on the means of the parishioner. The sacraments and ministrations of the Church should never be refused to the

[1] 1 Cor. ix 13, 14.

[2] Cf. 1 West., d. 23, nn. 4, 5; 2 West., d. 8; 3 Plen. Baltim., tit. 9; can. 1496.

[3] St Thomas, *Summa*, 2-2, q. 87, a. 1.

poor who cannot pay the usual fee, nor more especially is the priest justified in refusing the consolations of religion to dying people on the ground that they neglected the duty of supporting their pastors during life. The priest is bound by other ties to his flock than by the hope of earthly reward.

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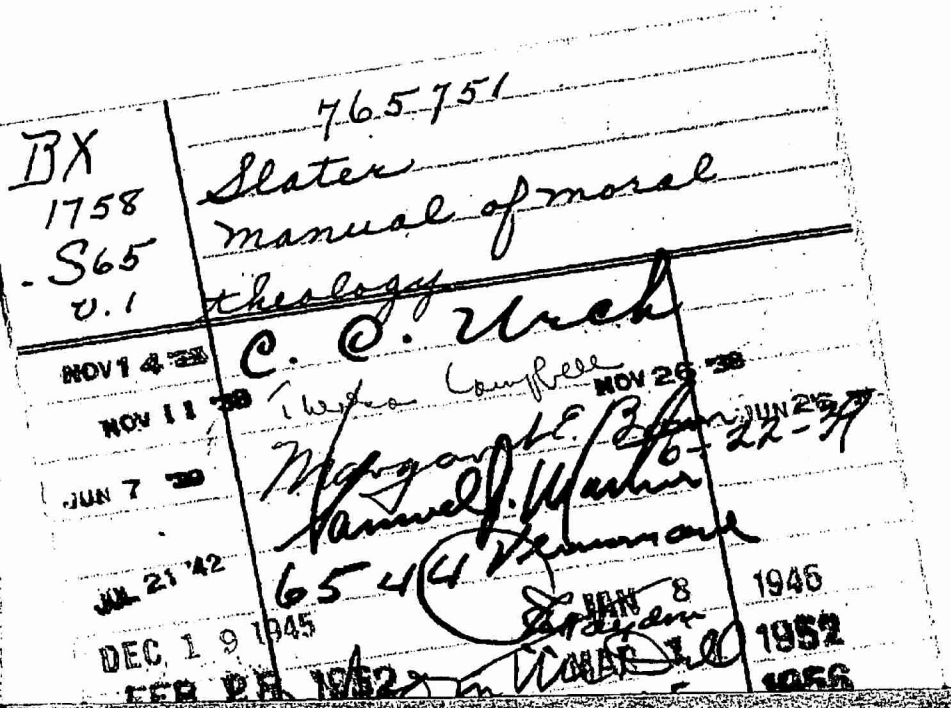

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A MANUAL OF MORAL THEOLOGY

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FOR ENGLISH-SPEAKING COUNTRIES

BY

REV. THOMAS SLATER, S.J.

VOL II.

FIFTH AND REVISED EDITION

NEW YORK, CINCINNATI, CHICAGO

BENZIGER BROTHERS

PRINTERS TO THE HOLY APOSTOLIC SEE

1925

BX1758
.S65

NIHIL OBSTAT:
H. DAVIS, S.J.

IMPRIMI POTEST:
GULIELMUS BODKIN, S.J.

NIHIL OBSTAT:
J. R. MCKEE, C.O.,
Censor deputatus.

IMPRIMATUR:
EDM. CAN. SURMONT,
Vicarius generalis.

WESTMONASTERII,
Die 5a Januarii, 1925.

Made and Printed in Great Britain

765752

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BOOK I

ON THE DUTIES ATTACHED TO PARTICULAR STATES AND OFFICES

IN the preceding volume we have treated of the duties which are incumbent on all men, or at any rate on all Catholics, by the natural, divine, and ecclesiastical law. Some special duties, however, arise from the nature of the state in which one is placed or of the office which one holds. Thus a judge or a doctor has as such certain special obligations as well as the cleric or the religious. The confessor should know all the obligations of his penitents, and so moral theologians usually treat in this place of the special duties of judges, doctors, clerics, and religious. We will follow their example in this Book and treat in the first part of the special obligations of certain laymen, in the second of those of clerics, and finally of those of religious.

PART I

ON THE DUTIES OF CERTAIN LAYMEN

CHAPTER I

ON THE DUTIES OF JUDGES

1. A JUDGE is defined to be a public person appointed by lawful authority to apply the laws to the settling of disputes between litigants and to the punishment of criminals.

He is said to be a public person because he is appointed by public authority, not chosen like an arbitrator by the litigants themselves, and, moreover, he is guided in his official capacity not by his private knowledge and ideas but by the evidence given in the case and by the laws which he administers. Case law, or judge-made law, in English jurisprudence, is no exception to this rule, for it is but the authentic interpretation and application of the common and statute law to concrete cases made in court by the judges of the superior courts.

A cause in which the private rights of the litigants are to be adjudicated upon is called a civil case or action; if the cause is one in which an offender is tried for the commission of a crime it is called a criminal case or action.

2. By his very position and the nature of his office a judge is bound to pass a just sentence according to law in the cases brought before him, and so he must possess the requisite qualifications for this and set about it in the right manner. He must have a competent knowledge of the law which is to be his guide and which he is called upon to apply, and he must use at least ordinary diligence to get at the merits of the case before him. He must not allow his judgement to be influenced by such improper motives as fear or favour; his sentence must be dictated by a sense of even-handed justice. He must observe the rules of judicial procedure applicable to the case, and he must have the requisite authority or jurisdiction for dealing with it.

If in any of these points the judge is culpably at fault, he sins against justice and is bound to make good the damage which he causes. Moreover, inasmuch as judges ordinarily take an oath of office, he will also sin against the sanctity of his oath. A judge who should allow himself to be bribed to give an unjust sentence would not only be bound in conscience to repair the injustice done, but he would be liable to severe punishment for his offence. Even if he were to take a bribe for delivering a just sentence, he is bound in conscience to restore what he received. For, as his office binds him in justice to give sentence according to the merits of the case, such a service is no ground for special reward or payment, nor a just title for retaining a special reward or payment if he has received any.

3. The judge, as we have seen, must pass sentence according to the evidence before the court, not according to his own private knowledge or views. He may know privately that an accused man is guilty, but he must not condemn him unless his guilt has been proved by the evidence. But what if the judge knows for certain that an accused man is innocent, and yet, according to the evidence available, he has been proved guilty? In such a case as this the judge must, of course, use all the means in his power to bring out the innocence of the accused party, or remit the case to another court. But supposing that he has done all in his power to avoid condemning the innocent man, and nevertheless the jury have found him guilty, and by law it only remains for the judge to pass

sentence according to the verdict. Is he allowed to do so? This question was disputed among theologians. Some, with St Thomas, taught that he might condemn the innocent man, for the witnesses were then guilty of injustice, not the judge, who did his duty in passing sentence according to law. Others denied that this is lawful, for to condemn the innocent, especially if there is question of a death sentence, is intrinsically wrong. Others distinguished, and taught that it is indeed unlawful to condemn an innocent man to death even when, by judicial process, he has been proved to all appearances guilty, but that when there is question of a fine or imprisonment which may be suffered without sin, the judge may pass sentence according to the law, for this is for the public good. Practically, therefore, according to the principles of English jurisprudence the judge may lawfully pass sentence even of death in such a case, but he is bound afterward, by making representations to the proper authority, to do what he can to clear the innocent party.

When the evidence in a criminal trial is not conclusive, the defendant must not be condemned, for a man is presumed to be innocent until he has been proved conclusively to be guilty.

In a civil action, when the rights of the parties are not certain, but only probable, the judge is bound to adjudicate in favour of him who has the more probable right, taking into account possession and all the other circumstances in the case. If there is equal probability on either side, the parties should come to a compromise, or, as some hold, the judge may decide in favour of either party.

4. The judge is bound to pass sentence according to law, for this is presumed to be just. It may, however, happen that particular laws are unjust, as when the seal of confession is not respected or divorce is permitted. May a Catholic judge pass sentence in accordance with such laws as these?

The judge may sometimes obtain permission to pass sentence according to a law which is unjust merely because it is against the laws and rights of the Church. In order to make the position of Catholic judges tenable the Church will sometimes cede her rights in such cases or grant jurisdiction to try a case which of itself belongs to the ecclesiastical courts. Thus Cardinal Gasparri deduces from a decree of the Holy Office, December 19, 1860, that jurisdiction has been granted to judges in England to try cases where there is question of judicial separation of married people.[1]

[1] Gasparri, *De Matrim.* 2, n. 1165.

If the law commands what is contrary to the natural or divine law—as, for example, to give evidence as to what has been declared in confession—it is intrinsically wrong to obey such a law, and no Catholic judge may apply it.

If the unjust law only imposes a fine or imprisonment, some theologians maintain that even then it may not be applied by a Catholic judge. Others, however, hold that for grave reason—as, for example, if no Catholic could otherwise accept the office of judge—sentence may be passed according to such a law. The person unjustly condemned must patiently submit for the public good, especially as he would not escape even if Catholic judges refused to execute the law.

The unjust sentence of a judge imposes no obligation in conscience, and of course the aggrieved party may have recourse to all available remedies which the law allows for redress. If none is available the public good will usually require patient submission to the wrong. If there is a doubt about the justice of a sentence, presumption favours the judge, and obedience must be yielded, as in the case of a just sentence, which has the force of the law which it applies.

5. What has been said concerning the moral obligations of judges is applicable in due proportion to those who have similar functions, such as arbitrators, referees, and jurymen. An arbitrator differs from a judge in that he is chosen by the parties to the dispute to settle their claims. If the submission to arbitration and the decision of the arbitrator be in writing, the sentence is final, and will be upheld by English courts unless it is evidently corrupt or obtained by unlawful means.[1]

Referees are officials or experts to whom the court entrusts some special question for inquiry or decision, and sometimes the cause itself, if it be complicated and not suitable for trial in the ordinary way. They are bound to act according to the terms of their commission and the rules drawn up for their guidance. The report or award of a referee, unless set aside by the court, has the force of a jury's verdict.

A jury is a body of men selected and sworn to inquire into certain matters of fact, and to declare the truth upon evidence to be laid before them. They are therefore bound to form the best judgement in their power as to the facts of the case laid before them, and truthfully and fearlessly to give their verdict. If any one of them has any private knowledge of the facts of the case, he is not precluded from communicating it to the others, and he should do this if justice or charity require it.

[1] *Cf.* Can. 1930.

CHAPTER II

ON THE DUTIES OF ADVOCATES

1. AN advocate is one who undertakes to assist litigants by his advice and help and by pleading their case before the judge. For the purposes of moral theology we may neglect the technical differences between barristers and solicitors in English law.

As the advocate acts in the name of his client he may in general do what his client is allowed to do, and he must not do what it would be wrong for his client to do. He may not undertake a cause which is manifestly unjust; otherwise he will be guilty of sin, and bound to make restitution for all the damage that he causes. If in the course of the trial it becomes manifest that his client's cause is a bad one, he must inform his client of the fact and refuse to proceed with the case. However, it is not necessary that the advocate should be certain that his client is right; it will be sufficient if his cause is probably just, for it may be expected that the doubtful rights of the parties will become clear in the course of the trial. In a criminal action the advocate may always defend the accused by lawful means whether he be guilty or not. If he is guilty, the defence of his advocate cannot do any serious harm, and will at least help toward the merciful administration of justice. The prosecution of an accused person may not be undertaken unless his guilt is practically certain, for otherwise there will be danger of injuring the character of an innocent person and of exposing him to vexation without just cause.

From the decree of the Holy Office, December 19, 1860, in answer to the Bishop of Southwark, it is clear that in England an advocate may undertake a case where there is question of judicial separation between husband and wife. Even in an action for divorce in a civil court he may defend the action against the plaintiff. If the marriage has already been pronounced null and void by competent ecclesiastical authority, a Catholic advocate may impugn its validity in the civil courts. Moreover, for just reason, as, for example, to obtain a variation in the marriage settlement, or to prevent the necessity of having to maintain a bastard child, a Catholic lawyer may

petition for a divorce in the civil court, not with the intention of enabling his client to marry again while his spouse is still living, but with a view to obtaining the civil effects of divorce in the civil tribunal. This opinion at any rate is defended as probable by many good theologians. The reason is because marriage is neither contracted nor dissolved before the civil authority; in the formalities prescribed for marriage by civil law there is only question of the civil authority taking cognizance of who are married, and of the civil effects which flow therefrom.

2. With reference to the duties of the advocate toward his client, he must, of course, have the requisite knowledge and skill to undertake the case according to the reasonable expectations of his client, and he must exercise due care and diligence in the execution of the duty which he has undertaken. If in these respects he is culpably negligent, he will be guilty of injustice and bound to make restitution for the harm he does. Furthermore, if his client has no case, and no chance of success in the suit, the advocate must make this known to him; he must avoid useless delays, keep the strictest faith with his client, and use only just means to gain his cause.

English law will not enable a barrister to institute legal proceedings for the recovery of his honorarium if it is withheld. This, however, does not prevent the obligations of a contract existing between an advocate and his client, so that as the former is bound in justice to do his part for the latter, so is the client bound in justice to recompense his lawyer according to the terms which were explicitly or implicitly agreed upon. With regard to solicitors the law sufficiently provides against extortion in the matter of fees.

By the general law of charity a lawyer should be prepared to give his assistance for the love of God to the poor who cannot pay the usual fees. Indeed, if an accused person has no one to defend him, the judge will usually request someone to undertake the office.

English solicitors frequently fulfil the functions of notaries public, and as such receive all acts and contracts which must or are wished to be clothed with an authentic form, confer on such acts the required authenticity, establish their date, and prepare and attest instruments going abroad.

CHAPTER III

ON PROSECUTORS, DEFENDANTS, AND WITNESSES

1. THERE are other persons connected with the administration of justice besides judges and lawyers, and they have special moral obligations of their own. A word must be said about the moral duties of prosecutors, defendants, and witnesses. By canon law the accusation of delinquents in an ecclesiastical criminal trial is reserved to the Promotor of Justice, but as a general rule anyone who has full use of his senses may prosecute according to English law. Nobody should undertake a prosecution when greater evil than good would follow from it, or when there is not moral certainty as to the guilt of the accused. Otherwise it may be done for the sake of the public good, and there may be an obligation to do it, as when one's office compels one to undertake the task, or the defence of the innocent or the public good require it, or a precept of obedience command it. Thus by ecclesiastical law heretics and priests guilty of solicitation in the sacred tribunal are to be denounced to the Ordinary.

2. The defendant in a criminal trial is not himself subjected to examination according to English law, unless he offers himself voluntarily to give evidence, and then he may be examined like a witness. In canon law the accused is examined, and the question arises whether he is bound to tell the truth. According to Canon 1743: " The parties are bound to answer the judge when he interrogates them legitimately, and to tell the truth unless there is question of a crime committed by themselves."

The defendant may in self-defence make known the secret crime of a witness against him, if it really conduces to his defence; but of course he may never impute false crimes to anybody. A criminal may not defend himself against lawful arrest, for that would be to resist lawful authority, but he is not compelled to deliver himself up to justice, and it is not a sin to escape from justice if he can do so without violence. The law prescribes that he shall be kept in durance, not that he shall voluntarily remain in custody. A criminal lawfully condemned to death is not obliged to save his life by escape

or other means if he can do so; he should submit to the execution of the sentence passed upon him, and may do so meritoriously.

3. Charity or obedience may impose an obligation to give evidence in a court of justice. If serious harm can be prevented by offering one's self as a witness, there will as a rule be an obligation to do so, and obedience imposes the obligation when one is summoned by lawful authority.

A witness is bound by his oath and by obedience due to lawful authority to tell the truth in answer to the questions lawfully put to him. How far he is privileged when examined concerning what he knows under secret, we saw when treating of the Eighth Commandment of the Decalogue. He is not bound to incriminate himself, nor, of course, may the seal of confession ever be broken (*cf.* Can. 1755).

The canon law laid it down that two witnesses of unsuspected character were necessary and sufficient evidence of any fact alleged in a court of justice. A solitary witness was not usually sufficient or admissible evidence of a crime, and in keeping with this the theologians decided that a solitary witness should not declare what he knew of a crime, inasmuch as he was not lawfully interrogated. English law, however, with most modern systems, admits one witness, if credible, as sufficient evidence of a fact, and so as a rule there will be an obligation on such a one of answering according to his knowledge when questioned lawfully in a court of justice (*cf.* Can. 1791).

CHAPTER IV

ON THE DUTIES OF MEDICAL MEN

1. A DOCTOR who holds himself out as ready to undertake the care of the sick must have competent knowledge of his profession and must exercise his office at least with ordinary care and diligence; otherwise he will sin against justice and charity in exposing himself to the risk of seriously injuring his neighbour. Unless he is bound by some special agreement he is not ordinarily obliged to undertake any particular case, for there are usually others who are willing and able to give the necessary assistance to the sick. Even in time of pestilence he will not commit sin if he leave the neighbourhood, unless he is bound to remain by some special contract. Of course, one who acted thus would show a mean spirit, and would be justly reprobated.

2. He should not make exorbitant charges for his services, nor multiply visits uselessly and thus increase his fees, nor call in other doctors without necessity. On the other hand, even at his own serious inconvenience, he should visit a patient whose case he has undertaken when called as far as is reasonable, and he should be ready to call in other doctors for consultation when necessary or when he is asked to do so. He is sometimes bound by the general law of charity to give his assistance gratis to the poor who cannot afford to pay the usual fees.

3. He may not neglect safer remedies in order to try those which are less safe, but there is nothing to prevent him from prescribing what will probably do good if it is certain that it will not do harm. In a desperate case, with the consent of the sick person and of his relations, he may make use of what will probably do good though it may also probably do harm, provided that there is nothing better to be done in the circumstances. It is altogether wrong to make experiments with doubtful remedies or operations on living human beings, *fiat experimentum in corpore vili.*

What has been said of craniotomy and other similar operations, the use of morphia, hypnotism, and other

dangerous remedies, are questions which have been treated elsewhere.

4. When the patient is in danger of death, the doctor is bound out of charity to warn him or those who attend on him of his danger, in order that he may make all necessary preparations for death if it should come about.

A medical man should know how to administer baptism in case of necessity (Can. 743).

PART II

ON THE SPECIAL DUTIES OF CLERICS

CHAPTER I

ON HOLINESS OF LIFE

1. THE sacredness of the duties which a cleric has to perform, and especially the service of the altar, require in him an internal holiness so that he may perform his duties worthily. "Let them therefore be holy, because I also am holy, the Lord, who sanctify them."[1] This holiness must show itself in the exercise of all Christian virtues so that the cleric may be an example to those whom he is called upon to instruct and guide on the way to heaven. As the Council of Trent said: "There is nothing which is so constant a lesson in piety and the worship of God as the life and example of those who have dedicated themselves to the divine service. For since they have been taken from worldly affairs and placed in a higher position, the faithful look upon them as models for their imitation. And so it becomes the clergy who have been set aside for the service of God so to order their lives and morals that in their dress, demeanour, walk, speech, and everything about them, nothing may be seen but what is serious, modest, and breathes the religious spirit. Let them avoid even slight defects, which in them would not be slight, so that their actions may win the veneration of all."[2] This holiness of life is very frequently inculcated on the clergy in the councils and synods.[3]

Their occupations, if worthily performed, are means of sanctifying them and uniting them with God, and, moreover, the Church does what she can to secure the same end by prescribing the daily recitation of the divine office, and spiritual retreats at stated times (Can. 125, 126).

2. Great personal sanctity becomes the cleric, and is required if he is to perform his duties worthily. It is a disputed question among theologians whether the inferior clergy are as such in a state of perfection. It is allowed by all that bishops

[1] Lev. xxi 8. [2] Sess. 22, c. 1, de Ref. *Cf.* Can. 124.
[3] 1 West., d. 24; 4 West., d. 12.

are in the state of practising perfection, inasmuch as they are in a permanent condition of life which is devoted to procuring the sanctification of those committed to their charge. Religious, too, by their vows assume the obligation of aiming at perfection, and in religious life find the means of acquiring it. Both bishops and religious, then, are in the state of perfection. St Thomas and many other theologians deny that the secular clergy inferior to bishops are in the state of perfection, properly so called. The chief reason is because their condition of life has not the permanence required for a state in the technical sense, and although they are occupied in labouring for the sanctification of others, like bishops, yet they do this rather as officials and helpers of bishops, not entirely in their own name and of their own authority. As the learned Suarez admits, the controversy is rather about words than things, and we may accept his conclusion that because the higher secular clergy are bound by vow to continence, and partake also in the duties of bishops, they may be said to be in an inchoate state of acquiring and practising perfection.[1]

[1] Suarez, *De Rel.* 3, lib. 1, c. 17.

CHAPTER II

THE CELIBACY OF THE CLERGY

1. THE celibacy of the clergy rests on a positive enactment of ecclesiastical law which, nevertheless, supposes the doctrine of Christ and his Apostles about the excellence of virginity and its superiority to marriage. From the first ages of the Church it was felt that there was an incongruity between the Christian priesthood, with its duties of offering up the eucharistic sacrifice, and of whole-hearted devotion to the service of God, and the use of marriage. The example of our Lord and the counsels of St Paul told powerfully in the same direction. Already in the fourth century the law of celibacy existed which was formulated by Leo the Great in his letter to Anastasius written about the middle of the fourth century: "Although," he says, "those who are not clerics may freely give themselves to marriage and the procreation of children, yet for the exhibiting of perfect chastity marriage is not allowed even to subdeacons, so that those who have wives should be as those who have them not, and those who have them not should remain single." All the more stringently, he goes on to say, does the same law bind the higher clergy, deacons, priests, and bishops. This law was frequently inculcated by subsequent Popes, re-enacted in many ecclesiastical synods, and at latest in the Second Council of the Lateran (1139) marriage of the higher clergy was prohibited under pain of nullity. By ecclesiastical law, then, clerics in sacred orders are bound to observe perfect chastity, and marriage attempted by them is null and void.[1] This law is known to all who aspire to sacred orders, and so those who choose the clerical state voluntarily embrace the law of continence. Indeed, a vow of perfect chastity is by ecclesiastical usage annexed to the reception of sacred orders, so that all who are ordained subdeacons, by the very fact of receiving ordination, take a solemn vow of chastity. The discipline of the Eastern Church is somewhat milder. Clerics belonging thereto may marry before the reception of sacred orders, and if they have already done this

[1] Can. 132, 1072.

they may keep their wives, except bishops. Even in the East clerics in sacred orders cannot contract a valid marriage.

2. There is a dispute among theologians as to whether the obligation of celibacy, which binds clerics in sacred orders, should be ascribed immediately to ecclesiastical law or immediately to a vow of chastity tacitly taken when sacred orders are received according to the precept of the Church. The question is not of great practical importance, for in any case the obligation of celibacy is derived ultimately from ecclesiastical law, which binds all clerics in sacred orders to the observance of perfect chastity. The violation of such a law, at any rate by external act, is not morally different from a violation of a vow of chastity. The more common and more probable opinion is that the obligation of celibacy is derived immediately from a vow of chastity which every subdeacon takes tacitly according to the precept of the Church when he receives the first of the sacred orders. Tacit profession even of the essential vows of religion was admitted in certain cases until it was altogether abrogated by a decree of Pius IX dated June 12, 1858. Boniface VIII decided that the vow of chastity thus tacitly taken by subdeacons is solemn, and that it annuls subsequent marriage if attempted.

A man who was married but whose wife is dead may be promoted to sacred orders. "Men who have a wife" are prohibited from receiving orders according to Canon 987, 2; and Canon 132, sec. 3, lays down that a married man who, without a dispensation from the Holy See has received holy orders even in good faith is prohibited from the exercise of the same.

CHAPTER III

THE CLERICAL DRESS

1. EVER since about the sixth century clerics have had a special dress of their own to distinguish them from laymen. It is their uniform, like that of soldiers or sailors, and is a perpetual reminder to them that they should always conduct themselves as becomes their profession. At first the clerical dress was introduced by custom, and then sanctioned by positive law. On this point the Council of Trent (sess. 14, c. 6, de Ref.), after saying that although the habit does not make the monk, yet clerics must always wear the dress suited to their order, so that by the decency of their dress they may make manifest the goodness of their moral character, goes on to prescribe under pain of suspension that all in sacred orders and beneficed clerics should wear the clerical dress suited to their order and dignity, according to the ordinance and command of their bishop. " Let all clerics wear a decent ecclesiastical dress according to the lawful customs of the place and the precepts of the local Ordinary " (Can. 136).

The common law of the Church therefore imposes on all the clergy the obligation of wearing the clerical dress, and it leaves to bishops the task of making further regulations on the point suitable to the circumstances of the country. In England, the Fourth Synod of Westminster (d. 11, nn. 12-14) decreed that the Roman collar was always to be worn, that the dress must be of black or dark material, and that in the house or church the cassock should be worn. The Third Plenary Council of Baltimore (n. 77) made the same regulations for the United States, except that the wearing of the cassock in the house or in the church is prescribed, not merely declared to be especially becoming.

2. The clerical tonsure is also prescribed by the common law of the Church, but it has not been reintroduced into England since the Reformation, nor is it in use in the United States. However, the obligation of not wearing hair on the face is laid down in the Fourth Synod of Westminster (*loc. cit.*). On this point Canon 136 prescribes:

" Let them wear the tonsure or clerical crown, unless this

be against the received manners of the people, and let them use a simple and ordinary care of the hair."

All religious are bound by these and similar obligations of clerics according to Canon 592.

3. These laws of themselves bind under pain of mortal sin which, however, would not be committed if there were good cause for doing what they forbid, nor if they were neglected without contempt or grave scandal for a short time. Theologians consider that the clerical dress would have to be neglected for more than three or four days in order to sin grievously, and a much longer time would be required for a grave violation of the law concerning tonsure. Venial sin, of course, is committed by breaking the law without legitimate excuse even for a short time.

CHAPTER IV

THE DIVINE OFFICE

1. ALL who are in sacred orders, all beneficed clergy, and all religious orders which have solemn vows and keep choir, are bound every day to recite the divine office, otherwise called the canonical Hours, or the breviary. This obligation is now enforced by positive ecclesiastical law in Canons 135, 1475 (sec. 1), 610, 413.

The obligation of saying the office begins for secular clerics with the reception of the subdiaconate, or the lawful and full possession of their benefice. The obligation as it affects religious is primarily incumbent on the superior, whose duty it is to provide for the saying or singing of the divine office under pain of grave sin. Each religious is bound to assist in choir unless lawfully excused, and if one who is solemnly professed is absent he must recite the office in private. Religious under simple vows should be present in choir, but if they failed to be present they are not obliged to say the office in private, unless, of course, they be in sacred orders.

2. The obligation of saying the divine office for all who are bound by it is grave, so that a mortal sin is committed by wilfully and without lawful excuse omitting it or any considerable portion of it. According to theologians, one of the little Hours or any portion of the same length is to be reckoned considerable, so that its culpable omission will be a grave sin. Anything less than this will be only venial. A beneficed cleric not only sins by neglecting his office, but he loses his right to a proportional amount of the fruits of his benefice, and if he has already received that amount he must restore it to the fabric of the church or to the diocesan seminary, or give it to the poor (Can. 1475, sec. 2).

When two or more say the office together, the psalms may be said in alternate verses, one side listening while the other is reciting its verse. The rest listen while the lessons are said or sung by those appointed to the task.

3. Although the canonical Hours as said at different periods and in different churches have always been much the same in substance, yet in many details there has been considerable

variety. Pope Pius V desired to introduce greater uniformity in the method of saying the divine office, and for this purpose he issued the Roman Breviary, and made its use obligatory on all who were bound to the office under pain of not satisfying their obligation. He abolished the use of other breviaries with the exception of such as dated back more than two hundred years. The divine office, therefore, must be recited according to the form of the Roman Breviary, and in Latin, the liturgical language of the Church.

Offices proper to particular countries, dioceses, and religious orders, are allowed to be inserted in the breviary and said only by the authority of the Apostolic See, and when a proper office has been thus granted it becomes obligatory on the grantees unless it was expressly conceded as permissive.

Pius V took away the obligation, which existed according to the rubrics of the breviary, of reciting the Little Office of the Blessed Virgin, the penitential and gradual psalms, and the Office of the Dead; but though he took away the obligation, still he exhorted those bound to the divine office to recite them, and granted indulgences to such as followed his exhortation. The recitation of the Litany of the Saints on the feast of St Mark, and on the Rogation Days, forms part of the office.

4. The office to be said on any particular day is indicated in the calendar drawn up and approved by the proper authority. It is a matter of obligation under pain of venial sin to adhere to the calendar, even if it seem to be wrong, unless it is manifestly against the rubrics or decrees of the Sacred Congregation of Rites. A reasonable cause, however, even though it be not a very grave one, will suffice to excuse the substitution of one office for another. If a wrong office has been said by mistake or inadvertence, there is no obligation to say the correct one; but if this is notably longer, some portion should be said to make up the difference.

The calendar to be followed is that of the church, diocese, or religious order to which one belongs. If absent from one's place of domicile for a time, the general rule is that one's own calendar should be followed; but in the case of regulars who recite the office in choir, a regular living for a time in another monastery should conform to the calendar of the place where he resides.

5. In each day's office the order of the Hours should be observed at any rate under pain of venial sin. But here also any reasonable cause of some weight will excuse the saying of the Hours out of their proper order. If the time has arrived

for anticipating Matins and Lauds for the next day, these may be said without any special reason even though the office of the day has not yet been finished, for each day's office is independent of any other.

6. The divine office is a vocal prayer imposed on the clergy by the Church. It is not sufficient to run over it with the eyes or mentally; the words must be uttered and formed without mutilation by the lips, though it is not necessary to produce an audible sound. The different Hours must be said without interruption as one continuous prayer under pain of venial sin, from which any reasonable cause will excuse. The recitation may be interrupted between the several Hours, between Matins and Lauds, and for the space of a few hours even between the Nocturns of Matins. Provided that the whole office be said within the natural or ecclesiastical day, whatever interruptions may have taken place, the obligation will be substantially fulfilled, and when an interruption has been made within an Hour, or even in the middle of a psalm or lesson, there is no obligation to repeat what has already been said.

7. As was said above, the divine office is the task of the day, and provided that the whole of it is said within the day, reckoning from midnight to midnight, the cleric will have fulfilled his duty substantially so as to be excused at least from mortal sin. The rubrics, however, which in this matter bind under venial sin, assign certain times of the day for the saying of the Office. Matins and Lauds should be said before Mass, Prime and Terce should be said before midday, Sext and None are said in the interval between midday and Vespers, Vespers and Compline are said when the sun is midway between the zenith and sunset. All the little Hours may be said before midday, and during Lent, beginning with the first Sunday, Vespers are also said before midday.

Matins and Lauds of the following day may be anticipated on the previous evening. The normal time for anticipating begins with the hour of Vespers, but a special privilege is often granted by which Matins and Lauds of the following day may be begun at 2 p.m. throughout the year. Indeed, there does not seem to be any necessity for a special grant, for a custom has been introduced, by the very common practice of good priests, of anticipating throughout the year after two o'clock. A cleric may safely follow this custom.

Permission to anticipate is a privilege which no one is bound to use; the obligation of the day's office only begins at twelve o'clock.

The breviary contains rubrics directing that certain prayers be said on bended knee; these rubrics, however, do not bind when office is said privately out of choir. In private the office may be said in any place or in any position that is compatible with the due reverence to God which should be shown in prayer.

8. The obligation of saying the breviary is imposed by ecclesiastical precept, and the question arises what internal dispositions are necessary while reciting the office in order to satisfy the positive precept of the Church. Does one who is voluntarily distracted while saying the office satisfy his obligation, or must he repeat what he said with voluntary distractions? It is not a question of what is required that prayer may be pleasing to God—voluntary distractions while praying are certainly venial sins—but the question is, what sort of attention is required by the law of the Church under pain of not fulfilling the obligation imposed by the law?

Attention, which is an act of the mind adverting to what is being done, must be distinguished from intention, which is the will to do something. At least, a virtual intention to say the office is required that the act may be voluntary, such as the law prescribes. Theologians distinguish between internal and external attention. The former consists in directing the mind to God, or in thinking of the sense of the words uttered, or in being careful to pronounce them correctly, and it is certain that any of these forms of internal attention is sufficient to satisfy the precept. External attention means the abstaining while engaged in prayer from any external occupation which is incompatible with internal attention. Thus one who curiously examines a painting while praying, or intently listens to what someone is saying, has not external attention.

It is a disputed point among theologians whether this external attention is sufficient in order to satisfy the precept of saying the office, or whether there must be in addition internal attention. In other words, they dispute whether one who is voluntarily distracted but apparently devout while saying the breviary satisfies the law, or whether he must repeat what he has said with wilful distractions.

Although, of course, all should strive after internal attention, and sin is committed if voluntary distractions are admitted while praying, yet it is probable that external attention is sufficient to satisfy the positive law of the Church. For the Church does indeed prescribe prayer, but there is prayer in a real sense when one says the breviary with the intention of

fulfilling his obligation, and with decorum and a devout demeanour, even though he is thinking of something else the while. If voluntary distractions destroy the essence of prayer, involuntary distractions will do so likewise, and yet it is impossible to avoid involuntary distractions altogether. This milder opinion is especially of use in order to calm scrupulous and anxious souls.[1]

9. As the obligation of saying the divine office arises from positive law, it does not bind when it would entail serious inconvenience. On this ground one who is sick, or who cannot say his office without causing a serious headache, is excused. Moreover, other occupations, undertaken for the good of our neighbour and such as cannot be neglected without his loss, will be a sufficient excuse for omitting the office, when both duties cannot be fulfilled. And so missionaries, who are all day long occupied in hearing confessions and preaching, are excused from the office which would interfere with their work. Even when there is not a sufficient cause to excuse of itself from the law, a dispensation may be lawfully obtained from the competent authority, if there be good cause for it. The Pope can grant a dispensation to any cleric, a bishop can dispense in particular cases with those of his diocese, and a regular prelate has similar powers for his own subjects. Wider powers are also granted as a special privilege by the Holy See. The faculty of saying fifteen decades of the rosary instead of the office is frequently granted to missioners who are lawfully prevented from saying the office. The meaning of which is that there must be some difficulty in getting in the office, but it need not be so great as would of itself excuse altogether from the obligation. Inasmuch as the office is composed of several portions which are usually said separately, there will be an obligation to say any such portion if it can be done without serious inconvenience, even though it be impossible to say the whole.

[1] Lugo, *De Eucharist.* 22, n. 25.

CHAPTER V

ON THINGS FORBIDDEN TO CLERICS

1. In general, clerics are forbidden to do anything which is unbecoming their state of life or which interferes with the due discharge of their duties—"No man being a soldier to God entangleth himself with secular businesses," says St Paul (2 Tim. ii 4). They are expressly forbidden to indulge in games of chance for money, to carry arms unless there is good reason to fear attack, to hunt with hounds, to enter inns and similar places without necessity or some good reason approved of by the Ordinary of the place (Can. 138).

Similarly, they are forbidden to practise medicine or surgery without leave of the Holy See, to act as public notaries, except in the ecclesiastical court, to hold public offices which involve the exercise of lay jurisdiction or administration.

2. Without leave of their own Ordinary they should not undertake the agency for property belonging to laymen, nor secular offices which entail the duty of rendering accounts; they should not exercise the office of procurator or advocate except in the ecclesiastical court, or when a cause of their own or of their church is being tried in the civil court; they should take no part, not even as witnesses, without necessity in a lay criminal trial.

Clerics are forbidden to go surety even with their own property without consulting the local Ordinary.

3. They are forbidden to offer themselves for the post of Members of Parliament or to accept it without leave of their own Ordinary and of the Ordinary of the place where the election is held (Can. 137, 139).

4. Clerics are forbidden to retain in their houses or in any way to be familiar with women about whom any suspicion can arise.

They may live under the same roof only with those women of whom natural ties allow no suspicion to be entertained, such as mother, sister, aunt, and so forth, or whose good character and mature age make them free from all suspicion.

The judgement as to whether the retaining or being intimate with women, even with those on whom suspicion does not

usually fall, can in any particular case create scandal or be a danger to morals, belongs to the Ordinary of the place, whose duty it is to forbid such retaining or intimacy to clerics (Can. 133; 4 West., d. 11, n. 3).

5. Canon 140 forbids clerics to be present at spectacles, dances, and pageants which do not become them, or when their presence would cause scandal, especially in public theatres.

"The word *spectacula*," says Fr. Ayrinhac, "comprises all theatrical representations and likewise such exhibitions as horse-races, bull-fights, prize-fights, etc., at least if it be taken in its most general sense." Dom Augustine gives a similar definition of the term.

Provincial legislation often makes this general law more precise. Thus 4 West., d. 11, n. 9 is as follows: "We strictly prohibit ecclesiastics who have received sacred orders from being present at stage representations in public theatres or in places temporarily made use of as public theatres, under the penalty to transgressors of suspension to be incurred *ipso facto*, as has hitherto been the rule in all parts of England, with reservation to the respective Ordinaries."

Clerics, therefore, are forbidden to be present at public not at private theatricals by this law. Custom in England makes an exception with regard to those exhibitions which are given by mere children.

6. Clerics are forbidden to enter military service, unless they do so with the leave of their own Ordinary in order that they may be free the sooner, and to aid in any way civil war and disturbances of public order (Can. 141).

Clerics are forbidden to trade in person or through another, whether in their own interest or in that of others (Can. 142).

The trading which is forbidden to clerics and all religious is trading in the strict sense of the term. In this sense to trade is to buy commodities, not for consumption, but with the intention of selling them again at a higher price without changing their nature. So that it is not trading in the strict sense to sell the produce of one's own land, nor to sell what was bought for consumption but was found to be unsuitable, nor to sell without profit to the poor, nor to sell a picture painted by one's self with colours bought in the market. However, certain transactions which have the appearance of trading are sometimes forbidden on account of the danger and scandal which they are apt to cause.

It is not illicit trading to invest money in Government stock or other bonds which bear interest, though it would be un-

lawful speculation to invest money with the intention of selling out at a profit if the price rises. Although it is forbidden to clerics to act as directors or to take part in the management of industrial and commercial companies, yet it is probable that a cleric may lawfully invest money in such enterprises as are honest merely with a view of getting interest on his investment. He only buys the right to receive interest on his money, much in the same way as if he invested it in Government stock.

The prohibition against trading binds under pain of grave sin if the matter be considerable. However, trading implies a habit, and so in the opinion of many divines to trade once in a way, even in a considerable quantity, would not be a mortal sin.

Canon 2380 prescribes that clerics and religious who violate the law against trading be punished by the Ordinary according to the gravity of the fault.

CHAPTER VI

ON BENEFICES

MENTION has several times been made already of benefices, and in this place moral theologians usually treat of the special obligations in conscience of beneficed clergy.

An ecclesiastical benefice is a juridical entity founded or erected in perpetuity by competent ecclesiastical authority, and it consists of a sacred office and the right to receive the income from the dowry annexed to the office (Can. 1409).

The dowry of a benefice consists either of property whose ownership belongs to the juridical entity itself, or of certain and due payments made by some family or moral person, or of certain and voluntary offerings of the faithful, which belong to the rector of the benefice, or stole fees, as they are called, within the amounts fixed by the diocesan tax or lawful custom, or of choral distributions with the exception of a third part of them, if the whole income of the benefice consists of choral distributions (Can. 1410).

When he has lawfully taken possession of his benefice, every beneficiary enjoys all the rights both temporal and spiritual which are annexed to the benefice (Can. 1472).

Although the beneficiary may have other property besides what is derived from his benefice, he can freely use and enjoy the fruits of his benefice which are necessary for his decent support; but he is bound by the obligation of spending what remains over on the poor or on pious causes, but a Cardinal can dispose even by will of all the fruits of his benefice (Can. 1473).

If a cleric violates this precept and disposes of what remains over in other ways, he sins against obedience but probably not against justice, so that there is no obligation to restore what has been disposed of against ecclesiastical law.

The beneficiary is bound faithfully to fulfil the special duties annexed to his benefice, and, moreover, daily to recite the canonical Hours (Can. 1475, sec. 1).

If, without any legitimate excuse, he has failed to satisfy his obligation of reciting the canonical Hours, in proportion to his omission he does not make the fruits of the benefice his

own, and must hand them over to the church fabric or to the diocesan seminary, or must give them to the poor (Can. 1475, sec. 2).

The beneficiary, as the guardian of his benefice, ought to administer the property belonging to his benefice according to law (Can. 1476, sec. 1).

If he is negligent or in any other way in fault, he ought to make good the damage done to the benefice, and he should be compelled to make compensation for it by the local Ordinary, and if he be a parish priest he can be removed from his parish in accordance with Canon 2147 ff.

The Code of Canon Law and the canonists should be referred to for fuller treatment of this matter.

CHAPTER VII

ON THE SPECIAL DUTIES OF BISHOPS

1. THE duties of bishops of the Catholic Church are treated of at length in canon law; here we will touch upon the chief of them in so far as they affect conscience.

In order to be able to fulfil his various duties a bishop must habitually reside within the limits of his diocese. It is a disputed point among theologians whether this obligation is derived immediately from the divine law or from the positive law of the Church. We may say that at least remotely and in substance it belongs to the divine law, for in detail it is determined by the positive law of the Church. The bishop need not always live in the episcopal city, but he should be there to pontificate in the cathedral on the more solemn festivals of the year. Notwithstanding the obligation of residence the Code of Canon Law allows a bishop to absent himself from his diocese for good cause for a period of two or three months every year provided that he can do so without injury to his flock.[1] His own conscience must decide what cause is sufficient to justify his absence. Besides these two or three months a bishop may further absent himself if Christian charity, urgent necessity, due obedience, or the evident advantage of Church or State require it. But besides these reasons, in countries subject to the Sacred Congregation of Propaganda, the leave of the Sacred Congregation is also required for longer absence than the two or three months mentioned above.

2. At stated times bishops are bound to visit their dioceses in order to promote sound religious teaching and to correct errors in doctrine, to protect the good and punish the wicked, and to exhort the people to lead religious, peaceful, and good lives.[2] They are specially bound to watch over the morals and discipline of the clergy, and that there may be a constant supply of zealous priests for the needs of the diocese they should have a seminary for the education of those whom God calls to the clerical state. By the authority of the Holy See several dioceses may have a seminary in common if they are too small and poor to support a separate one for themselves.[3]

[1] Can. 338. [2] Can. 343. [3] Can. 1354.

The care of sound Christian doctrine is specially entrusted to bishops, and in the exercise of this charge they may visit public and private institutions, except such as are exempted from their jurisdiction, and they may condemn bad books not only by their ordinary authority, but as delegates of the Holy See in this important matter. They are bound at times to preach the word of God; every Sunday and day of obligation, even on the feast days that have been suppressed, they are bound to offer up Mass for the people committed to their charge; they should hold a diocesan synod every ten years, and make their visit *ad limina* at the fixed times, in order to render an account of the state of their dioceses to the Holy See.

CHAPTER VIII

ON THE DUTIES OF CANONS

. THE canons attached to a cathedral church form the council or senate by whose advice and help the bishop is assisted in the government of the diocese. Collegiate churches were also served by a body of canons. By the common law, besides helping the bishop in the government of the diocese, canons were bound to residence near the church which they served; they were bound to sing the divine office every day in choir, and in turn to celebrate the conventual Mass. When a bishopric becomes vacant the government of the diocese devolves on the chapter of canons, who must elect within eight days after the vacancy occurs a vicar capitular to administer the affairs of the diocese until the appointment of a new bishop.

2. As there are either no prebends for the support of the canons in this country, or their income is too small for the purpose, our canons have been dispensed by the Holy See from the obligation of residence near the cathedral and from the daily celebration therein of Mass and divine office. They are, however, still bound to assemble at the cathedral on some one day in every month to be designated by the bishop, and on that day to sing office, say a conventual Mass, and hold a chapter. Similar provisions have been made in other countries. In the United States the place of canons is to some extent taken by the diocesan consulters.

In diocesan matters of importance the bishop is bound to ask the advice of his canons, and sometimes it is specially provided that he must obtain their consent to what he proposes to do.

Canons in England do not indeed elect a new bishop, but the Holy See has granted them the right of commendation, which is exercised by electing three clerics whose names they send in alphabetical order to the archbishop or to the senior bishop if the vacancy occurs in the archbishopric. The bishops then hold a meeting and after deliberation send the names with their remarks and opinions concerning the merits of each to the Holy See. The Holy See selects one of the three or someone else as it is judged more expedient.

CHAPTER IX

ON THE DUTIES OF PARISH PRIESTS

1. THE parochial system is not an institution of the primitive Church, much less of divine origin. For some centuries it was usual for the bishop to reside in some city with his body of clergy around him, some of whom were despatched as occasion required to minister to the faithful in outlying districts. In the fifth and sixth centuries parishes began to make their appearance in some places in the country districts, and in the eleventh, parish churches began to be instituted in the cities. Even at the period of the Council of Trent the parochial system had by no means become universal, but this council commanded that where churches had no fixed limits nor the pastors their own flock, and the sacraments were administered promiscuously to any who asked for them, the bishops should divide the people into fixed and proper parishes and assign to each its perpetual and separate parish priest, who might know them, and from whom alone they might lawfully receive the sacraments.[1] It added, indeed, that they might provide in some better way as circumstances of place demanded.

The Code of Canon Law prescribes that the territory of each diocese be divided into distinct parts called parishes, and that to each parish be assigned its own parish church with separate parishioners, and over it is to be placed its own parish priest for the necessary cure of souls (Can. 216).

The bishop should also divide his diocese into separate districts consisting of several parishes and called *vicariates forane*, or *deaneries*.

In the same way, where it can be done conveniently, vicariates apostolic and prefectures apostolic are to be divided.

The parts into which vicariates and prefectures apostolic are divided are called quasi-parishes, and the priests placed over them are called quasi-parish priests.

A parish priest is a priest or moral person or corporation who is collated to a parish in title with the cure of souls to be exercised under the authority of the local Ordinary (Can. 451).

A monastery or a cathedral chapter may have the habitual

[1] Sess. 24, de Ref., c. 13.

cure of souls as parish priest, but in accordance with Canon 471 such corporation must constitute a vicar to exercise the actual cure of souls, and allow him his decent support according to the judgement of the bishop.

When the parish priest has obtained possession of his parish, it is his lawful title for the exercise of all the duties and rights belonging to the office, and for the receiving of all the emoluments connected with it.

Quasi-parish priests and vicars of parish priests have in general all the rights and duties of parish priests (Can. 451, sec. 2).

2. In order that a parish priest may be able to fulfil his duties and be ready to help his parishioners in their spiritual needs, he should reside in the presbytery near the church.

The parish priest is allowed to be absent for two or three months, either continuous or interrupted, in the year, unless a grave reason in the judgement of the Ordinary himself requires a longer absence or permits only a shorter.

The days during which a parish priest is engaged in spiritual exercises, in accordance with Canon 126, once a year, are not reckoned in the two months of vacation.

Whether the time of vacation be continuous or interrupted, when the absence is to last beyond a week, the parish priest, besides a legitimate cause, ought to have the leave of the Ordinary in writing, and leave a vicar as substitute in his place to be approved by the same Ordinary; and if the parish priest is a religious he requires, in addition, the consent of his superior, and his substitute ought to be approved both by the Ordinary and by his superior.

If a parish priest is compelled by some sudden and grave reason to depart and to be absent beyond a week, let him inform the Ordinary by letter as soon as possible, telling him the reason of his departure and the priest who supplies for him, and let him abide by his commands. Even for a period of shorter absence a parish priest ought to provide for the needs of the faithful, especially if special circumstances demand it (Can. 465).

The Westminster Synods require that curates give notice to the parish priest if they wish to absent themselves even for a day.

3. On Sundays and on the other days of obligation throughout the year it is the peculiar duty of the parish priest to preach the word of God to the people in the usual homily, especially in the Mass, which is more frequented by the people.

The parish priest cannot habitually satisfy this obligation by employing another to do it, except for a good reason approved by the Ordinary.

The Ordinary may allow the sermon to be omitted on certain more solemn festivals, or even on some Sundays for a good reason (Can. 1344).

The kind and manner of instruction should be accommodated to the people, teaching them what is necessary for salvation, inveighing against vice and inculcating virtue, so that the people may be able to avoid hell and gain heaven, as the Council of Trent teaches.

The parish priest should prepare the children of his parish for the reception of the sacraments of Penance and Confirmation, and more specially for their first Communion. Moreover, after their first Communion he should take the opportunity to give them fuller instruction. On Sundays and days of obligation at some suitable time he should give catechetical instruction to the grown-up people of his parish (Can. 1330-1332).

4. To be able to fulfil his duties towards the members of his flock, a parish priest must know them, and he should not wait till they come to him; he should visit them and seek out those who have wandered from the fold. He is bound to correct the erring and to strive to recover them. He should also be able to devote some time to inquiring souls outside the fold. He should keep a book in which to enter particulars concerning the *status animarum*. He must be ready to administer the sacraments at the reasonable request of his parishioners, and he must say Mass in order that they may be able to fulfil their obligation of hearing it on the appointed days. Indeed, the provincial synods express a desire that there should be Mass daily in the parish church, and it will be the duty of the priest to provide this wherever the faithful have been led to expect it and frequent the church for the purpose.

On all Sundays and holidays of obligation, even on those that have been suppressed, parish priests are bound to apply Mass for their people (Can. 466).

Quasi-parish priests are bound to apply Mass for their people at least on the more solemn feasts mentioned in Canon 306.

The parish priest should say the Mass to be applied for the people in the parish church unless circumstances require or suggest otherwise. If he is lawfully absent he can apply the Mass for the people either himself in the place where he is staying, or through the priest who supplies for him in the parish (Can. 466, secs. 4, 5).

The Code mentions five kinds of parochial vicars: Vicarius curatus, Vicarius oeconomus, Vicarius substitutus, Vicarius adjutor, and Vicarius co-operator.

It will be sufficient for our purpose to say something on the duties of Vicarii co-operatores, or curates, as they are frequently called in this country.

If, on account of the number of people or for some other good reason, the Ordinary judges that one priest cannot look after a parish, he should appoint one or more curates and assign them a decent support.

The rights and duties of a curate are to be learnt from the diocesan statutes, from the letters and faculties of the Ordinary, and from the commission of the parish priest, but unless his sphere of activity is expressly limited, he should, from the nature of his office, take the place of the parish priest and help him in the whole care of the parish, except that he is not bound to apply Mass for the people. He is subject to the authority of the parish priest, who ought in a fatherly manner to instruct and guide him in the cure of souls, watch over him, and at least once a year send a report concerning him to the Bishop (Can. 476).

CHAPTER X

ON PRIESTS WITHOUT SPECIAL CHARGE

1. THE Council of Trent declared[1] that no one should receive ordination who was not, in the judgement of his bishop, necessary or useful to the diocese, and it decreed that nobody should in future be ordained without being *incardinated* in the diocese for whose necessity or advantage he was taken, so that all priests may have occupation and may not wander about without fixed abode.

The new Code of Canon Law prescribes that all clerics must belong either to some diocese or to some religious order, so that unattached clerics are nowise tolerated. A cleric is incardinated in the diocese for whose service he was promoted by the reception of the clerical tonsure (Can. 111).

All clerics, but more especially priests, are bound by a special obligation to show reverence and obedience to their respective Ordinaries. As often and for so long as the necessity of the Church requires it, in the judgement of the Ordinary, and unless excused by some lawful impediment, cleries must accept and fulfil the duties of the office which is assigned them by the bishop (Can. 127, 128).

Although they have not a benefice or a residential office, clerics may not depart for any considerable time from their diocese without at least the presumed leave of their own Ordinary. One who with the leave of his own Ordinary has gone to another diocese while remaining incardinated in his own, can be recalled if there is a good reason and natural equity is observed, and the Ordinary of the other diocese also can for a good reason refuse him leave to stay any longer in his diocese, unless he has conferred a benefice on him (Can. 143, 144).

2. Before ordaining a cleric the bishop should satisfy himself that the candidate is worthy and fit for the work of the sacred ministry. He must have the requisite holiness of life, without which the receiving of orders will only add to his greater condemnation. He must possess the knowledge necessary for the exercise of his duties, and he must be called

[1] Sess. 23, c. 15, de Ref.

by God. There is some apparent difference of opinion as to what precisely is implied by the necessity which all admit of a vocation from God to the clerical state. It is certain that no one may lawfully intrude himself into the ministry of his own accord. He must be duly approved and chosen for the work by the bishop. According to the catechism of the Council of Trent the words of the epistle to the Hebrews are to be understood of this external vocation through the lawful ministers of the Church. " Neither," we there read, " doth any man take the honour to himself, but he that is called by God as Aaron was."[1]

It is commonly admitted that besides this external vocation by the lawful prelates of the Church in the name of God, an internal call is also necessary. To be consecrated to the service of God a man must have the requisite gifts of body, mind, and soul, and, moreover, he must be satisfied that it is the will of God that he should devote himself to the sacred ministry, and that he will be able to perform its duties worthily, and thereby save his soul. The will of God in such matters is made known in various ways. Sometimes it is as plain and evident as was the call of St Paul on the road to Damascus. As a rule it becomes known by internal inspirations by which one is brought to think highly of the ministry, and by motions of the will by which one is drawn to desire it for the glory of God, the good of one's fellow-men, and the salvation of one's own soul. To embrace the priesthood without the consciousness of any such divine call would be hazardous and rash, and it would be grievously sinful if there were no wish or no prospect of being able to fulfil the duties of the clerical state. On the other hand, if the motive for embracing the clerical life were not seriously wrong, and if there were the firm resolve to fulfil the duties of the priesthood faithfully, and a reasonable prospect of being able to do so, many approved divines consider that a person choosing the priesthood without a divine vocation would not sin grievously.

Divines discuss the question as to whether a cleric who has contracted a bad habit of secret sin would sin grievously by receiving sacred orders before he had overcome his bad habit. Some defend the view that he would do so, because he would violate the law of the Church which requires holiness of life in one who is admitted to sacred orders. Even if we admit with others that it is difficult to sustain this view, that the Pontifical seems not to countenance it, yet in ordinary

[1] Heb. v 4

cases it expresses the correct opinion in practice, for commonly there will be little chance of a cleric living up to his profession who before ordination had contracted a vicious habit. Such a one undertakes more than he can fulfil and sins grievously against the natural, if not against the positive law. His confessor then would be justified in bidding him defer ordination till he has corrected himself, and enforcing his command with a threat of refusing absolution, except in some extraordinary case of sudden and complete conversion.

Canon 1363 forbids the Ordinary to receive into his seminary any but legitimate boys whose disposition and will give hope that they will always devote themselves to the ministry of the Church with fruit. Before reception they must show certificates of legitimate birth, of baptism and confirmation, and testimonies of being of good character. Special provisions are made with regard to those who have been dismissed from another seminary or from a religious order (Can. 1363).

There used to be a controversy as to whether a priest as such was bound to say Mass. This question is settled by Canon 805: "All priests are bound to say Mass several times a year; moreover, let the Bishop or the religious superior take care that they say Mass at least on all Sundays and holidays of obligation."

PART III

ON THE SPECIAL DUTIES OF RELIGIOUS

CHAPTER I

ON THE NATURE OF THE RELIGIOUS STATE

1. WE learn from the Gospels that, besides the ordinary way of the Commandments to be followed by all who wish to save their souls, our Lord proposed the way of perfection to the select few who wished to follow him more closely.[1] This way of perfection consists in renouncing the goods of this world and the cares of family life, and following our Lord's example of perfect obedience to the will of our heavenly Father. From the first ages of the Christian Church there were many who accepted our Lord's invitation and lived in voluntary poverty and chastity. Comparatively few historical documents of the earliest centuries of the Christian era have survived, but we find traces of a body of ascetics and virgins to whom a place of special honour was assigned in the Church. At first they seem to have lived in the bosom of their families, but soon they fled to the deserts of Egypt, Syria, and Palestine, and for guidance and encouragement put themselves under the rule of some experienced hermit. Nothing was then wanting to the essence of the religious state except vows and a rule. When the counsels of perfection began to be practised under vow cannot be determined exactly; the first formal religious rules are the work of St Basil and St Benedict. Thus in its essence the religious state has been instituted by Jesus Christ, and, as historically evolved under the guidance of his Church, it may be defined as a fixed and stable way of life approved by the Church for the faithful who, under a certain rule and a common way of living, wish to aim at perfection by the observance of the three vows of poverty, chastity, and obedience, with the entire surrender of one's self to God. Thus those who devote themselves to works of piety and charity without vows, or with only private vows, are not in the religious state, nor are they technically called religious. They want the necessary

[1] Matt. xix.

stability. This stability is given by the profession of public vows of poverty, chastity, and obedience, the chief of the counsels of the Gospel, by which a person renounces the attractions of this world which draw so many away from God, in order to give himself wholly and entirely without let or hindrance to the love and service of God. The Church has always watched over and fostered the practice of religious life. In the thirteenth century there was danger of the great variety of religious orders causing confusion, and the Fourth Council of the Lateran forbade any new orders to be founded. The practical effect of this law was to prohibit new orders without the approbation of the Holy See. It is still in force as regards orders with solemn vows, which cannot be founded without the special approbation of the Pope. According to the new Code, bishops, but not Vicars Capitular or Vicars General, can found religious congregations with simple vows, but they are forbidden to found them or allow them to be founded without consulting the Holy See. If there is question of founding tertiaries living in common, the leave is also required of the General of the first order to which the tertiaries are to be affiliated (Can. 492).

A religious congregation founded by a bishop may in process of time acquire houses in other dioceses, but it remains diocesan and is wholly subject to the local Ordinaries, according to law, until it obtains a decree of the Holy See in praise of its end and scope, or one of formal approbation.

The end of religious life is perfect union with God, in which man's perfection consists, and this union the religious disposes himself for by the constant practice of works of sublime charity and of renunciation of all that could be an obstacle to charity. Thus the religious state is the state of perfection; not that religious are supposed to be already perfect, but because perfection of Christian charity is the end aimed at, and suitable means are furnished therein for obtaining that end.

2. The special obligations under which a religious lies follow from the nature of the religious state which we have described. Inasmuch as he devotes himself to the service of God in religion, he must do nothing that would endanger his perseverance or cause him to be dismissed from the order. He is especially bound to observe his vows of poverty, chastity, and obedience. which he has voluntarily made to God, and in which the essence of religious life and the chief means of practising perfection consist. He is bound to keep the rule which he takes for his guide in life by the very fact of entering into the order which

he has chosen as well as by ecclesiastical law (Can. 593). The obligation imposed by the rule is not the same in all religious orders. In some it binds under sin like the precepts of the superior. The rules of the Dominicans, Jesuits, and of most of the modern congregations, of themselves, speaking generally, do not bind under sin. Particular precepts are sometimes inserted in the rule, and these of course are to be observed under sin like any other precepts of obedience. Apart from these the rule is rather a guide of conduct in religious life, and an indication as to how the superior should govern his subjects, than a rigid code of law binding under pain of sin. However, divines point out that frequently violations of such a rule will be sinful, not precisely because they are infractions of the rule, but because there will frequently be something defective in them as moral acts. If the silence which the rule prescribes is broken without just cause, the act will be sinful on account of the motive which led to it, the scandal which it causes, and its tendency to loosen the bonds of religious discipline. Formal contempt of the rule, by which a religious refuses to be guided by it, and wishes to show his independence, is mortally sinful, because it is directly contrary to his religious profession.

CHAPTER II

ON ENTRANCE INTO RELIGION

1. OUR Lord Jesus Christ proposed the counsels of perfection to all his followers in general: " He who can take, let him take it "; " If thou wilt be perfect." When, however, we consider particular cases, we see that many are debarred as a matter of fact from embracing the religious state. Many find themselves in a fixed position in life with duties to be performed towards parents, relations, and others, which will not allow of their abandoning the world. Many more are unsuitable by character and temperament for the religious life. None of these can properly be said to have a divine call to the religious state, for when God gives a call he provides the necessary means for following it. There are others whom God calls in wonderful and different ways, making known his will to them sometimes in an extraordinary manner, more often by slowly developed inclinations and desires to forsake all and give themselves to him. The question arises whether such a divine vocation is a necessary condition for lawfully entering into religion, and whether one who felt himself called would sin if he neglected to follow the call.

Anyone who is free and who wishes to enter religion to be able to do more good, or to save his soul with greater security, is in fact called by God, for such desires are special graces given by God, and so they are signs of a divine vocation. So that all who have the aptitude, are free, and are led to religion by supernatural motives of some sort, are divinely called by God. One who entered religion from merely natural motives would probably soon find that he had made a mistake, and would return to the world. However, if such a one chose to rectify his intention and remained in religion to do good and to save his soul, he would not commit sin. He embraces a more perfect state of life, and if he does what in him lies, God will give him abundant grace to live a good religious life. Of course, sin is committed by one who enters religion from merely natural motives, and does not intend to fulfil the obligations of the state into which he has intruded himself. One who is called to religion and prefers to remain in the world acts very

foolishly, throws away a great grace, and may expose his salvation to great danger. If such a one is persuaded that he cannot save his soul in the world, he commits grave sin by not taking the necessary means to secure his eternal salvation. If, however, he hopes with God's grace (which will not be wanting to him) to lead a good life in the world, he will not commit sin by not following the divine call; for this is a counsel, not a command, and counsels do not bind under sin. Some divines disagree with the foregoing doctrine, but it is supported by the authority of St Thomas and many approved authors (*cf.* Can. 538).

2. As, therefore, the observance of the counsels is not only lawful but a more perfect state of life, anyone may enter into religion who is not prevented by some obstacle. Those who have not possession of their faculties, and children who have not arrived at the age of puberty, and are still subject to their parents, cannot enter into religion. In former times parents used occasionally to present their children to be brought up in monasteries with the intention of their becoming religious when they reached the proper age. This custom, however, has long been abandoned.

Besides safeguarding what the constitutions of each institute prescribe on the point, the Code declares that the following cannot be validly admitted to the novitiate:

Those who have formally belonged to a non-Catholic sect.

Those who have not the age required for the novitiate.

Those who enter religion induced thereto by violence, grave fear, or deceit, or whom the superior receives from the same motives.

A spouse while the marriage lasts.

Those who are bound or who have been bound by the bond of religious profession.

Those over whom hangs a penalty on account of committing some grave crime of which they have been or can be accused.

A Bishop, whether residential or titular, although only designated by the Roman Pontiff.

Clerics who, by an arrangement of the Holy See, are bound by an oath to work for the benefit of their diocese or mission, for the time during which the obligation of the oath lasts.

The following are admitted unlawfully but validly:

Clerics in sacred orders without the local Ordinary being consulted, or against his will, because their departure would be to the great loss of souls, and this loss cannot otherwise be avoided.

Those in debt who are not solvent.

Those who are liable to render accounts or who are implicated in other secular business from which religion may have to fear lawsuits and troubles.

Children who ought to assist parents—that is, father, mother, grandfather, or grandmother—placed in grave necessity, and parents whose care is necessary for the support and education of children.

Those destined for the priesthood in religion, but who are debarred from it by irregularity or other canonical impediment (Can. 542).

3. Girls may not be admitted to the novitiate or be professed before they have completed their fifteenth year, and before doing so they must be examined by the bishop or by someone deputed by him as to whether they know the grave character of the step they are about to take, and whether they are acting of their own free and unfettered will (Can. 552).

4. Boys cannot be lawfully admitted into any order or congregation before the superiors thereof have received from the Ordinaries of their place of birth and of any place where they have lived for more than a year after attaining their fifteenth year testimonial letters bearing witness to their having the qualifications necessary for entering religion.[1] By the common law a full uninterrupted year of probation must be spent by the candidate for religion in the house of the novitiate. Although the novice has not yet taken the vows of religion, he is subject to the authority of the superiors of the order and is bound to obey them.

[1] S.C. super Stat. Reg., January 25, 1848; can. 544.

CHAPTER III

ON RELIGIOUS PROFESSION

1. PROFESSION is the promise lawfully made and accepted by which a religious binds himself to observe the vows of poverty, chastity, and obedience, according to the constitutions of his order.

For the validity of any religious profession whatever it is required :

(1) That he who makes it be of the legitimate age, so that he must have completed for the temporary profession, his sixteenth year, and for the perpetual profession whether solemn or simple, his twenty-first year.

(2) That the legitimate superior according to the constitutions admit him to profession.

(3) That it be preceded by a valid novitiate according to the terms of Canon 555.

(4) That the profession be free from violence, grave fear, or fraud.

(5) That it be expressed in formal terms.

(6) That it be received by the legitimate superior according to the constitutions, either personally or by delegate.

(7) For the validity of the perpetual profession, whether solemn or simple, it is required besides that it be preceded by a temporary simple profession. Except in the case of a professed religious who joins another institute, in every order with solemn vows both of men and of women, and in every congregation with perpetual vows, the perpetual vows, whether solemn or simple, must be preceded by the profession of simple vows, which the novice on the completion of his novitiate shall make in the novitiate house itself, this profession is valid for three years, or for a longer period if the subject requires more than three years to attain the age prescribed for perpetual profession, unless the constitutions require annual profession (Can. 572-574).

Simple profession, whether temporary or perpetual, renders acts contrary to the vows illicit, but not invalid, unless it be otherwise formally expressed; while solemn profession renders such acts also invalid if they can be nullified (Can. 579).

CHAPTER IV

ON RELIGIOUS POVERTY

1. POVERTY in general is the want of temporal goods that have a money value. It is not a virtue of itself, but rather a physical defect, for a suitable provision of temporal goods is very useful and necessary for men to lead a decent life. Poor human nature, however, is inclined to attach itself too much to wealth, and for the sake of wealth to forget why man was created by God and placed in this world. Jesus Christ taught that detachment from worldly possessions was a necessary condition for being his disciple: "Every one of you that doth not renounce all that he possesseth, cannot be my disciple."[1] And for such as were not content to follow him in the ordinary way of the observance of the Commandments, but aimed at perfection, he proposed not only detachment from wealth or spiritual poverty, but actual poverty, the actual renunciation of wealth for his sake in order to imitate him more closely: "If thou wilt be perfect, go, sell what thou hast, and give to the poor, and thou shalt have treasure in heaven; and come, follow me."[2] Hence voluntary poverty in imitation of Jesus Christ is the foundation of the religious state. Voluntary poverty, however, does not constitute the essence of religious perfection; all Christian perfection consists in charity, to which poverty is but a means. Hence there is not an absolute and uniform standard of religious poverty, but it varies with the different ends which religious orders propose to themselves. Indeed, religious poverty is personal; it is the voluntary renunciation of personal and individual wealth, so that the love of wealth may not be an obstacle to the perfect following of Christ. Its essence consists in the renunciation of personal and independent ownership and use of property, for this it is which constitutes a snare for men's affections and a hindrance to perfection. So that religious poverty does not of itself prevent property being owned in common by religious, and if the end for which an order was founded requires it, there is nothing to prevent it having large possessions in common, provided that the individual religious practises poverty and is imbued with its spirit.

[1] Luke xiv 33. [2] Matt. xix 21.

The effects of the vow of poverty depend to a great extent on the rules and constitutions of the various religious orders and on the positive law of the Church. The chief distinction is that between solemn and simple vows of poverty, due to positive ecclesiastical law. The legal effects of a solemn vow of poverty are to render the religious incapable of individual and personal ownership of any property that has money value. So that after taking a solemn vow of poverty the religious cannot own any property in his own personal right. As a member of a religious community he may be a joint owner of vast possessions, but individually he is incapable of having anything as his own.

Ownership may be absolute or qualified. Absolute ownership is the moral right to dispose of property and of all its uses for one's own advantage. Qualified ownership is the right to dispose of the property or of its uses for one's own advantage. Divines call the qualified ownership of the thing itself direct ownership, and the qualified ownership of its uses they call indirect ownership. A religious, even though solemnly professed, retains his personal rights to life, good name, and honour; he can still dispose of his personal actions, such as the celebration of Mass, and such personal rights as that of presenting to a benefice; he may own a relic and dispose of it by gift, for it has no money value. As a solemnly professed religious is incapable of owning property in his own right, so he cannot acquire it for himself; whatever he gains by his labour, or whatever comes to him by gift or inheritance, becomes the property of the community to which he belongs; " whatever a monk acquires he acquires not for himself, but for his monastery," as the old adage had it. By the special constitutions of their respective orders, Capuchins, Observantines, and professed Jesuits cannot take property, even in the name and for the benefit of the community to which they belong, if it come to them by any hereditary title or by operation of law. They may, however, take gifts and legacies, and these become the property of their communities (Can. 582).

The simple vow of poverty does not deprive the religious of the direct, but of the indirect, ownership of property; so that he cannot lawfully use or dispose of anything that has a money value without the leave of his superior. Notwithstanding, then, the simple vow of poverty, religious retain the direct ownership of all the property that they had before profession, and of all that comes to them afterwards by any legal title or gift.

Several Canons of the new Code affect the matter of religious poverty. By Canon 568, if during the novitiate a novice in any way whatever renounces his benefices or his property or encumbers them, such a renunciation or encumbrance is not only illicit but also null and void.

Canon 569 prescribes: Sec. i. Before the profession of simple vows, whether temporary or perpetual, the novice must cede, for the whole period during which he will be bound by simple vows, the administration of his property to whomsoever he wishes, and dispose freely of its use and usufruct, unless the constitutions determine otherwise.

Sec. ii. If the novice, because he possessed no property, omitted to make this cession, and if subsequently property come into his possession, or if, after making the provision, he becomes under whatever title the possessor of other property, he must make provision, according to the regulations of Sec. i, for the newly acquired property, even if he has already made simple profession.

Sec. iii. In every religious congregation the novice, before making profession of temporary vows, shall freely make a will of all the property he actually possesses or may subsequently possess.

While safeguarding this latter canon, Canon 580 prescribes that all those who have made profession of simple vows, whether perpetual or temporary, unless the constitutions declare otherwise, retain the ownership of their property and the capacity to acquire other property. But whatever the religious acquires by his own industry or in respect of his institute, belongs to the institute.

As regards the cession or disposition of property treated of in Canon 569, sec. 2, the professed religious can modify the arrangement, not, however, of his own free choice unless the constitutions allow it, but with the permission of the Superior General, or, in the case of nuns, of the local Ordinary, as well as with that of the Regular Superior if the monastery be subject to regulars; the modification, however, must not be made, at least for any considerable part of the property, in favour of the institute; in the case of withdrawal from the institute this cession and disposition ceases to have effect.

Except within sixty days preceding the solemn profession, the professed of simple vows cannot validly renounce his property, but within this time, he must, saving special indults from the Holy See, renounce in favour of whomsoever he wishes all the property which he actually possesses on condition

of his profession subsequently taking place. The profession having been made, the necessary measures must be immediately taken to insure that the renunciation be effective also according to the civil law (Can. 581).

After profession of solemn vows, likewise without prejudice to special indults of the Apostolic See, all the property which comes in whatever manner to a regular—

(1) In an order capable of ownership, goes to the order, to the province, or to the house, according to the constitutions:

(2) In an order incapable of ownership, such as the Capuchins, it becomes the property of the Holy See (Can. 582).

Those who have made profession of simple vows in any religious congregation:

(1) May not abdicate gratuitously the dominion over their property *per actum inter vivos*. This phrase is technical, and signifies any way of disposing of property except by will. So that after profession of simple vows the professed cannot lawfully make a gift of his property to anyone.

(2) May not alter the will made according to the terms of Canon 569, sec. 3, without the permission of the Holy See, or if the case be urgent and time does not admit of recourse to the Holy See, without the permission of the higher superior, or, if recourse cannot be had to him either, without the permission of the local superior (Can. 583).

Within the limits indicated above, a religious, with the leave of his superior, may lawfully use and dispose of property. In order to justify such use and to excuse it from sin against the vow, the presumed leave of the superior is sufficient, which consists in a reasonably founded judgement that the act contemplated is not against the superior's wish. Much more will the actual, virtual, or tacit leave of the superior excuse an act of ownership on the part of a religious and prevent it from being a violation of the vow.

2. Sins against poverty are grievous if the matter be considerable. The measure as to what matter is considerable is the same here as in theft, for just as the sin of theft consists in taking away the property of another against his reasonable wish, so a sin against religious poverty consists in the use, disposal, or acceptance of property contrary to one's promise to God and the wish of religious superiors. The absolute sum which is necessary and sufficient for a mortal sin against the vow in all cases will be one pound sterling, and less will be sufficient if the community whose property is used or disposed of without leave is poor. Divines, however, allow that a moder-

ately rich monastery may be considered in this matter as equivalent to an absolutely rich individual proprietor.

3. In some orders it was customary for the religious to have money, books, eatables, for their own use, and such allowance was called the *peculium* of the religious. Such a practice is against the purity of religious poverty, and it was forbidden by the Council of Trent, as well as by several Roman Pontiffs. Indeed, if it was understood that subjects had the right to use and dispose of the peculium as they pleased, in perfect independence of the will of their superior, it would be against the very essence of religious poverty. In many orders the custom is still sanctioned of having a peculium in more or less dependence on the will of the superior.

It is not against poverty to administer money in the name of another, for such administration is not an act of ownership. A religious may, then, act as the almoner of another, but he must not distribute alms in his own name as if the money were his own. To keep a deposit of money with the obligation in justice of accounting for it is against religious poverty.

CHAPTER V

THE VOW OF CHASTITY

1. THE Catholic Church, following the teaching and example of our Lord and of St Paul, esteems very highly the beautiful virtue of chastity. According to her teaching, the state of marriage is indeed good, and Jesus Christ raised marriage to the dignity of a sacrament, but the state of virginity is better. For such as wish to follow Jesus Christ more closely and to dedicate themselves wholly to God, celibacy and absolute chastity are proposed as a counsel of perfection. There is no fear that the number who embrace this counsel will ever be so great as seriously to interfere with the proper increase of the population. There will always be a sufficient number left in the world to enter upon the married state. Nor is the heroic renunciation of the pleasures of married life made by religious lost upon the world. As long as there are numbers of men and women to be seen who for love of God and chastity lead solitary lives, it should be more easy for people in the world to curb their fleshly appetites so as to keep within the bounds of reason and virtue.

By the vow of chastity the religious promises Almighty God that he will altogether abstain from all venereal pleasure, whether of thought or deed. In consequence he is bound to observe perfect chastity of body and mind, so that any act which he commits contrary thereto will be a double sin, against the virtue and against his vow. We saw, when treating of the Sixth Commandment, that sins by which venereal pleasure is directly sought or consented to are always grave, and so, when such sins are committed by religious, their grievous malice will be twofold.

2. One who has taken a solemn vow of chastity is incapable of contracting a valid marriage by the law of the Church, and *a fortiori* he cannot enter on valid espousals. A marriage contracted and consummated before the taking of a solemn vow of chastity remains valid, but by ecclesiastical law a marriage which has not been consummated is dissolved by solemn vows taken in a religious order (Can. 1119). A simple vow of chastity never annuls a previous marriage, but it makes

the use of marital rights unlawful. It is a disputed point as to whether a simple vow annuls previous espousals. A simple vow of chastity certainly makes subsequent espousals invalid, as being an unlawful promise, and it renders subsequent marriage unlawful though not invalid, except the simple vow made in the Society of Jesus, which is a diriment impediment to marriage by a special privilege of the Holy See.

3. In order to safeguard the chastity of religious, and to enable them to lead more quiet and tranquil lives, the law of enclosure has been introduced. The enclosure in a religious house is all the space within which the religious may move freely, but which they may not leave without the required permission, and to which others are denied access.

The law of enclosure is laid down in detail in the new Code of Canon Law, Can. 597 *ff*.

Papal enclosure should be kept in the houses of regulars, whether of men or women, if they are canonically erected, even though less than six professed religious live there.

Enclosure should also be kept in the houses of religious congregations whether of pontifical or diocesan law. The bishop has authority in this matter, and can enforce his regulations by censure.

Even societies of men or women who live together under a superior like religious, but without vows, are subject to the law of enclosure according to Canon 679, sec. 2.

CHAPTER VI

THE VOW OF OBEDIENCE

1. MEN of the world find it difficult to understand how one man can surrender his liberty and bind himself by vow to obey another. And yet this counsel of perfection, too, is contained in the life and teaching of the divine Founder of the Church. He did not intend that all the members of his Church should be equal; he placed some in authority over the others, and he gave them power to teach, instruct, correct, and guide those who were subject to them. He therefore laid a duty of obedience to spiritual rulers on all the faithful. Those who were content to observe the Commandments were bound only to obey such positive precepts as the rulers of the Church judged it expedient to impose on all Christians; but those who aimed at perfection became as a consequence subject to the teaching and authoritative guidance of their rulers in matters which pertain to perfection as well. Those who were content with observing the Commandments reserved some liberty for themselves; those who aimed at Christian perfection gave themselves wholly to obedience after the example of him who was obedient even unto death. The prelates of the Church are therefore the superiors of religious men and women, and even if some are exempt in some matters from the jurisdiction of the ordinaries, all are subject to the Pope, not only as the Supreme Head of the Church on earth, but as their highest religious superior.[1] In approving of a religious order or congregation the Pope and the bishops delegate the necessary authority to the lawful superiors of the order, and give them power to command their subjects in all that pertains to the observance of the rule.

A religious, therefore, who takes a vow of obedience binds himself thereby to obey all the precepts which his superiors lay upon him according to the rule of the order.

In order, then, that the obligation of the vow may become operative, a precept must be given by the superior. And here we must distinguish between the vow and the virtue of obedience. The virtue of obedience inclines to the most per-

[1] St Thomas, 2-2, q. 186, a. 5; can. 499, sec. 1.

fect conformity of will and judgement of the subject with the will and judgement of the superior. A subject who has the virtue of obedience will strive to execute the known will of his superior without waiting for a strict command. The obligation of the vow is not so extensive as the virtue of obedience. The vow will be saved if precepts are externally executed, for, according to the more common opinion, the vow of obedience does not extend to merely internal acts.

The superior's authority is limited and defined by the rule, and so the subject is only bound to obey such commands of the superior as are sanctioned by the rule directly or indirectly. It is not, however, necessary that the precept should be expressly sanctioned by the rule in order to enable a superior to impose it with authority: it is sufficient if it be implicitly and indirectly sanctioned, as it will be if its imposition conduces to the better and more perfect observance of the rule.

2. Violations of the vow of obedience are grave sins of themselves. However, in practice, sins of religious against obedience are seldom mortal, for want of sufficiently grave matter, or because the superior does not intend to impose a grave precept. Such sins will be mortal when in grave matter the superior commands anything to be done in virtue of obedience, or when serious harm follows from disobedience, or when a subject refuses to obey from formal contempt of authority, wishing to exercise and display his independence.

When the vow of obedience is violated, there is a double malice in the sin. Such a violation is a sin against the vow, and thus it is a sacrilege; and it is also a sin against the Fourth Commandment of the Decalogue, which prescribes obedience to be rendered to all lawful superiors. Such lawful superiors are armed with spiritual jurisdiction delegated to them by ecclesiastical authority, or at least they have the natural authority which belongs to all rulers of a community, great or small. Superioresses of nuns have this natural authority, and so they can impose even grave precepts of obedience on their subjects, although as women they cannot have ecclesiastical jurisdiction.

BOOK II

THE SACRAMENTS IN GENERAL

CHAPTER I

THE NATURE OF A SACRAMENT

1. MERELY external religion, without devotion of mind and heart to the service of God, is hypocrisy, but though we should serve God in spirit and in truth, external rites and ceremonies are not excluded from religion. On the contrary, they form an essential part of it. Man is composed of body and soul; both come from God, and both should share in the worship due to their Creator. Besides, internal religion will be faint and likely to evaporate altogether, unless it sometimes finds expression in outward acts. God has provided for these wants of human nature by instituting the sacred rites, which we call sacraments, as essential parts of true religion. They serve also as signs by which the faithful are known to and united among themselves and distinguished from those outside the fold. They serve, too, as an external profession of faith, and as a means of practising the very salutary virtue of humility, inasmuch as we are compelled to seek in external rites the spiritual help of which we stand in need, whereby intellectual pride is humbled.

There were sacraments under the Old Law as there are under the New, although the latter are far more efficacious than the former. As expressing what is common to the sacraments of Judaism and Christianity, a sacrament may be defined to be an outward sign of inward grace. A sacrament, then, is some outward rite or ceremony instituted by God, to show forth and make known the grace which he thereby bestows on the soul of the recipient. Thus circumcision signified separation from the idolatrous world, incorporation among the people of God, and the infusion of grace into the soul for the remission of original sin. The sacraments of the Old Law produced their effects by exciting the faith of the ministers and recipients of them and by the profession of faith in the coming Redeemer which their use contained.

The sacraments of the New Law were instituted by Christ

our Lord, and they confer the grace which they signify, not on account of the meritorious dispositions with which they are ministered or received, but on account of their dignity and intrinsic excellence. They were instituted by Christ, they are administered in his name and by his authority, and thus they are in a true sense the actions of Christ our Lord executed by his ministers. Divines express this by saying that the sacraments of the Christian Church confer grace *ex opere operato*, while those of the Old Law produced it *ex opere operantis*. A sacrament, then, of the New Law may be defined to be an outward sign of invisible grace instituted by Christ to confer the grace which it signifies.

There are certain rites and ceremonies in use in the Church which are called sacramentals. Of these we may mention the consecration of abbots, the first tonsure of clerics, the sacring of kings, the blessing of chalices and bells, holy water, *Agnus Dei*, scapulars, and many more. They are called sacramentals because they are sacred rites which, if properly used according to the mind of the Church, confer spiritual graces on the soul of him who uses them. They do this through the approbation and blessing of the Church, the Spouse of Christ, whose prayers and desires Christ always listens to, and through the good dispositions of those who use them. They thus differ from sacraments, as also in the grace which they produce. They confer actual graces, special helps to do good and avoid evil, given by God in answer to the prayers of the Church and the pious desires of those who use them properly (Can. 1144).

2. The Council of Trent defined as of faith that there are seven sacraments instituted by Christ our Lord: Baptism, Confirmation, the Eucharist, Penance, Extreme Unction, Orders, and Matrimony; that these sacraments contain the grace which they signify, and that they always confer grace on all those who receive them and put no obstacle to their effect. The sacraments, then, require certain dispositions on the part of the recipient in order that they may produce their effect. They will be validly received if nothing that is essential be wanting to them, but in order to produce their effect when they are received the recipient must have the required dispositions. I may apply a match to a faggot of wood, but this will not take fire if it is sodden with water. Similarly, if an adult asks for Baptism and is rightly baptized the sacrament will be validly received, but if the recipient has no faith or no sorrow for his sins the Baptism will indeed imprint a character, but it will not infuse sanctifying grace in the soul. In such a case as this

the sacrament is validly but not licitly received; it is said by divines to be unformed, not formed.

3. The Council of Trent also defined it to be of faith that the three sacraments, Baptism, Confirmation, and Orders, whenever they are validly received, imprint on the soul a certain spiritual mark which is called a character. This character serves to distinguish in the eyes of God and of his saints those who have received the sacrament in question; it is indelible, and prevents the sacrament from being received a second time. It is, however, compatible with the presence of mortal sin in the soul, so that, as was said above, a valid sacrament imprints its proper character even when on account of some obstacle in the recipient it is unformed and does not convey sanctifying grace to the soul.

The question here occurs whether a valid but unformed sacrament will afterward produce grace in the soul, if and when the obstacle be removed. The common opinion of Doctors and divines is that it will do so in the case of the three sacraments which impress a character on the soul. This opinion is founded on the tradition of the Church and on what is to be expected from the goodness of God and the nature of the sacraments. A cause which is in existence, but which was hitherto prevented from producing its full effect on account of some obstacle in the way, will produce that effect when the obstacle is removed. Many divines hold the same doctrine of reviviscence concerning the sacraments of Matrimony and Extreme Unction, which may not be repeated at the will of the recipient. Whether it is also applicable to Penance is a much disputed point, while it is commonly denied that the sacrament of the holy Eucharist can afterward produce its effect if it was unformed when received.

4. The sacramental grace which is conferred by the sacraments is habitual or sanctifying grace as directed toward the particular end for which the sacrament from which it flows has been instituted. Together, then, with the grace which justifies the sinner, or which increases the sanctifying grace of the soul in friendship with God, a sacrament gives a title to receive from God special help or actual graces when they are required by the recipient of the sacrament. Thus, the sacrament of Penance, if worthily received, infuses sanctifying grace into the soul by which the sins confessed are blotted out, and, moreover, it gives the sinner a title to receive actual graces in time of temptation, so as to enable him not to yield. In the same way the holy Eucharist increases sanctifying grace

within the soul, making it more holy and more pleasing in the sight of God, and fresh help is given to enable it to remain steadfast in the friendship of God.

The sacraments of Baptism and Penance, which remit sin and give sanctifying grace to souls that were deprived of it, are called sacraments which give the first grace, or sacraments of the dead, inasmuch as they give spiritual life to those who were spiritually dead; while the sacraments which should only be received by such as are already in the state of grace are said to confer the second grace, and are called sacraments of the living. If the soul is already justified and in the state of grace, sacraments of the dead confer second grace; while Extreme Unction may, as we shall see, confer the first grace, although it is primarily a sacrament of the living; and it is a probable opinion that the other sacraments may *per accidens* confer the first grace when received in good faith by the sinner. Inasmuch as a sacrament confers grace in virtue of the worth and dignity of the sacred rite itself, the quantity of grace given will *per se* be the same for all who receive it. However, *per accidens*, since a cause acts with greater or less efficacy in proportion to the dispositions of the subject on which it works, so a sacrament will give more grace to such as receive it in better dispositions. It may, then, very well be that more grace will be obtained from Holy Communion received two or three times a week with better dispositions than from daily Communion made without fervour.

5. The Council of Trent anathematizes anyone who shall say that the sacraments of the New Law are not necessary for salvation, though it also teaches that not all the sacraments are necessary for every individual. Under each sacrament it will be explained how far it is necessary and in what sense.

CHAPTER II

THE MATTER AND FORM OF THE SACRAMENTS

1. THE decree of Eugenius IV, for the instruction of the Armenians, lays down that all the sacraments consist essentially of three things: the matter, the form, and the minister who makes the sacrament with the intention of doing what the Church does. And, it adds, if any one of these elements be wanting the sacrament is not made. The sacraments, then, are not simple, but composite signs, which consist of two distinct elements. One of these in technical language is called the matter, because it is that portion of the sacramental sign which is the most indeterminate with respect to conveying the meaning which the sacrament signifies. This matter is called remote when considered by itself; it is called proximate when it is taken and applied by the minister to the making of the sacrament. The second element consists of words, and this part is called the form of the sacrament, because the words determine the matter to the more complete signification expressed by the whole sacramental sign. Thus in Baptism the water, considered by itself, is the remote matter of the sacrament and does not necessarily signify washing; water may be used to slake the thirst, and for many other purposes. The application of the water to the person to be baptized is the proximate matter, and when this is done with the form of words, "I baptize thee in the name of the Father, and of the Son, and of the Holy Ghost," the whole composite rite assumes a religious aspect, and signifies, according to the intention of the minister, the washing away of sin from the soul.

2. The minister of a sacrament must necessarily use the matter and form which were instituted by Christ, for he alone as God-Man has the power to cause grace to be conveyed to the soul by means of sacred rites.

There must be no change made in the matter and form of the sacraments; not even the Church's authority suffices for that. If a substantial change be made either in the matter or in the form, the sacrament is destroyed. The matter will be substantially changed if in the estimation of ordinary men it is no longer the same, but something else. Thus, if the wine

has become vinegar, it cannot be used as the matter of the Eucharist. The form will be substantially changed if the sense is no longer the same, but different. Thus, " I baptize thee in the name of the Father, and of the Son, and of the Holy Ghost " is the divinely instituted form for Baptism, and if the minister baptize with the words, " I baptize thee in the name of the Trinity " it is no sacrament, because of the substantial change. It is not lawful to make any change in the matter and form of the sacraments, but if an accidental and not a substantial change be made, so that the matter and the sense of the form remain the same, the sacrament will not be rendered invalid, as a general rule. However, a change which in itself is slight and accidental may be made substantial by the perverse intention of the minister. For the sense may then be quite different, and that different sense is expressed in the form. Thus Pope Zacharias wrote to St Boniface that Baptism administered with the form, *Baptizo te in nomine Patria, et Filia, et Spiritus Sancta*, is valid when the mistakes are made through ignorance of Latin, and not through heresy or a perverse intention.[1] If, then, such changes were introduced to give expression to heresy, the sense would be substantially changed and the form would be invalidated. Similarly, if Baptism were given with the form " I baptize thee in the name of the Father, and of the Son, and of the Holy Ghost, and of the Blessed Virgin Mary," the sacrament would be invalid if the minister intended to baptize in the name of the Blessed Virgin as of one of the Persons in the Godhead; if the addition was made through mistaken devotion to the Mother of God the sacrament would not be invalid. On the principles just stated Leo XIII decided that Anglican ordinations are invalid.

3. Except in case of necessity it is not lawful in the administration of the sacraments to use only probable matter or a probably valid form. An opinion contrary to this doctrine was condemned by Innocent XI, March 2, 1679. Justice and charity, which demand that the minister confer a sacrament validly, and do nothing to imperil its validity, require that he should use only certain matter and the certainly valid form as far as possible. Reverence also for the sacrament and for Christ, who instituted it, makes it necessary to take all due care that when a sacrament is administered it should be properly and validly administered. If, however, in a particular case only doubtful matter is at hand, and unless the sacrament is at once administered, the subject may be

[1] C. 86, d. iv, de Consec.

altogether deprived of it, then such doubtful matter may be used, since the reasons to the contrary then cease to be valid, because the sacraments were made for the benefit of man, not man for the sacraments.

4. As the matter and the form of a sacrament constitute together one composite sign of grace, there must not be such an interval between them as to destroy their unity. In the holy Eucharist the form requires that the matter should be physically present at the time when the words of consecration are uttered. In the other sacraments it is not necessary that the matter and form should be put at the same time in order that the sacrament may be valid; it is sufficient for the validity if there be a moral union between them so that according to a moral estimate they form one whole. Thus in Baptism, although the rubrics prescribe that the words should be said while the water is poured on the head, yet if a brief interval, say the space of a *Pater* or of an *Ave*, separate the matter and the form, the sacrament will still be valid.

The matter and the form should be applied by one and the same minister. Baptism would not be valid if one poured the water while another pronounced the words. In the Eucharist, however, and in Extreme Unction there are more than one form, each with its separate matter, and the sacrament would be valid if one minister consecrated one species or anointed one sense and another finished the rite. This, however, is only lawful in case of necessity, nor is it lawful for many ministers to make one sacrament at the same time, except when newly ordained priests celebrate Mass with the Bishop who has ordained them.

5. The sacraments should ordinarily be administered absolutely according to the manner in which they were instituted by Christ. If, however, in any particular case it is doubtful whether a sacrament was validly administered and there will be danger of grave spiritual loss to the subject unless it is repeated, it may and should be repeated conditionally. The condition should be expressed when the rubrics require it, as in the case of Baptism and Extreme Unction. Otherwise the condition may be implicit, and it will be sufficient if the minister intend to do his duty according to the institution of Christ and the laws of Holy Mother Church.

The Ritual expressly warns the minister that the conditional form for administering Baptism is not to be used at random or lightly, but with prudence, when after diligent inquiry there is a probable doubt whether the sacrament was validly con-

ferred before. The same principle is to be applied to the conditional administration of the other sacraments.[1]

Except in the case of Matrimony, which is a contract and follows in this the rules affecting other contracts, a sacrament cannot be validly administered under a condition which regards a future and uncertain event. The reason is because such a condition would of its nature suspend the effect of the sacrament, and when the condition is verified the matter and form no longer exist and cannot now produce their effect. Thus Baptism conferred on a child under the condition, " If you attain the age of reason," would be null and void. On the other hand, a sacrament conferred under a past or present condition will be valid if the condition be verified; it will be invalid if the condition be not verified. We have already seen when it is lawful to administer a sacrament conditionally. There will be an obligation to do so whenever justice and charity due to our neighbour require it in order to prevent his spiritual loss, or when reverence for the sacraments and for Christ, who instituted them, makes it necessary in order to avoid their invalid administration.

[1] Can. 732, sec. 2.

CHAPTER III

THE MINISTER OF THE SACRAMENTS

THE sacraments were instituted by Christ as so many channels or conduits by which he might convey to the souls of men the fruits of his passion and death. They are administered in his name and by his authority, and so Christ himself is the principal minister of the sacraments. However, he deigns to make use of men as his instruments for administering them, and it is of these secondary ministers who make the sacraments in the name of Christ that we have here to treat. In Matrimony, as we shall see, the parties to the contract themselves are the ministers to each other of the sacrament, and anyone who has the use of reason may confer Baptism validly. The minister of the other sacraments, at least for their lawful administration, must have the twofold spiritual power of order and jurisdiction which was given by Christ to his Church. We shall see, when treating of the several sacraments, how far order and jurisdiction are also required for their valid ministration. In the following sections we will lay down the conditions and dispositions which a minister of the sacraments should have to perform his office worthily.

SECTION I

The Attention and Intention of the Minister

1. While administering a sacrament the minister should attend to what he is doing and remember that he is engaged in a religious function. If he voluntarily allows his mind to wander on other and profane matters, he is guilty of irreverence toward God for whose worship the sacraments were instituted and should be administered. This irreverence, however, is not grave in itself, probably not even if a priest is voluntarily distracted during the consecration in Mass, so that voluntary distractions while administering the sacraments are only venial sins. Attention, then, or advertence of the mind to what is being done, is not necessary for the validity of a sacrament; only three things are necessary for its validity, as we saw above

—the matter, the form, and the intention of the minister to do what the Church does.

2. Intention is an act of the will directing an action to a certain end. Divines distinguish between an actual, a virtual, an habitual, and an interpretative intention. When a minister wishes here and now to administer a sacrament, he has an actual intention to perform the rite. If he had such a wish and in consequence set about his task, but became distracted while administering the sacrament, he has a virtual intention. An habitual intention is a wish to do something, which wish has not been retracted but which does not issue in action. An interpretative intention is a wish which would be conceived if one thought of it, but for want of thinking of it is not elicited.

An intention of some sort in the minister is necessary for the validity of a sacrament; the Council of Trent anathematized anyone who should say that there is not required in ministers while they make and confer the sacraments at least an intention to do what the Church does.[1] Now the Church by her ministers and through the sacraments baptizes, confirms, absolves from sin, and so forth; so that the minister while making a sacrament must intend to baptize, confirm, absolve. However, it is not necessary to have an actual intention of doing this; distractions cannot always be avoided, and always to have an actual intention while engaged in conferring the sacraments would be an impossible requirement. Nor would an habitual intention suffice, for it does not exist while the action is put, nor has it any effect upon the action. Much less would an interpretative intention be sufficient. It remains, then, that a virtual intention is necessary and sufficient in the minister while he makes a sacrament.

3. Ambrosius Catharinus, Salmeron, Contenson, and other theologians thought that an intention to perform the external rite of a sacrament, even if the minister internally expressly withheld his intention to do what the Church does, would be sufficient for the validity of a sacrament. Such an intention to perform the merely external rite while internally withholding the intention to baptize, absolve, and so forth, is called an external intention. The common opinion is that such a merely external intention is not sufficient, but that an internal intention or a positive wish to baptize, absolve, and so forth, is necessary for the validity of the sacrament. On December 7, 1690, Alexander VIII condemned the proposition that Baptism is

[1] Sess. vii, c. 11.

valid when it is conferred by a minister who observes all the external rite and form of Baptism but inwardly in his heart makes this resolution, " I do not intend to do what the Church does." This decree would seem to settle the matter, for it seems to have been directed against Fr. Farvacques, O.S.A., who, in a little book published ten years earlier, had defended the opinion of Catharinus and Salmeron. A few theologians even subsequently to the decree of Alexander VIII have defended the same view, on the ground that the decree was aimed at the Lutheran error which asserted the validity of the sacraments even when administered in joke. No Catholic, however, defended the Lutheran doctrine at the time, and it had already been condemned by the Council of Trent. We must, then, at least say with Benedict XIV that the condemnation of the above proposition inflicted a serious blow on the opinion of Catharinus, and no theologian of note now defends it. The Church does not merely apply the matter and form when ministering the sacraments, but by means of those external rites she intends to do what Christ instituted the sacraments to effect—that is, to baptize, to absolve, and so forth. An intention, then, to do this—to baptize, to absolve, or an internal intention—is necessary for the validity of a sacrament.

4. It is not sufficient for the minister while making a sacrament to have a vague intention of conferring it on somebody or other, or of taking and applying some matter in general for the making of the sacrament. The intention must be definite in its scope and object, otherwise there is no reason why this matter should be taken rather than that, or why one person should be benefited rather than another. An intention, therefore, to absolve anyone in a crowd who may need it, or to consecrate five hosts out of a larger number on the altar would not be effective.

Neither ignorance nor mistake on the part of the minister about the nature or effect of a sacrament makes it invalid. Baptism conferred by one who knows nothing of its nature, or by one who denies baptismal regeneration, is valid, provided that the three essential elements of the sacrament are not wanting.

Difficulties may arise from the fact that a minister while making a sacrament had mutually contradictory intentions. Thus an heretical priest while saying Mass may have the intention to do what Christ instituted but not to offer sacrifice, as he denies that Mass is a sacrifice. In this and in similar cases divines give the following rules for discovering whether

the sacrament is effected or not. When the contradictory intentions are present in the mind at the time of making the sacrament, that will prevail which is the stronger, and that is the stronger which would be chosen by the minister if he realized the contradiction. So that, in the example given, the heretical minister will actually say Mass if the intention to do what Christ instituted be the prevailing and stronger one; he will not say Mass if his intention not to offer sacrifice is the stronger. When the contradictory intentions follow one another, the last will ordinarily prevail, unless the former revoked all subsequent intentions.

5. Except in case of necessity the minister of a sacrament may not use probable opinions with reference to what belongs to the validity of the sacrament. As we saw when treating of the matter and form, it would be against the reverence due to the sacraments, against justice, and against charity, if the minister exposed the sacraments to the danger of nullity through following a merely probable opinion. He is bound to follow the safer opinion when he can do so in what relates to the validity of the sacraments. In questions, however, which only touch the lawfulness or the integrity of the sacraments, and when the Church supplies what is wanting in order that the sacrament may be valid, which she sometimes does, as we shall see later, there is no reason why the minister should not use probable opinions. The same doctrine applies also to the recipient of the sacraments.

Section II

The Faith and Holiness of the Minister

1. Neither faith nor the state of holiness and friendship with God is necessary in the minister for the validity of the sacraments which he confers. This is of faith, and it was defined by the Council of Trent. The sacraments do not depend for their effect on the good or bad dispositions of the minister, as they derive their efficacy from the institution and the merits of Christ. They produce their effect *ex opere operato*, not *ex opere operantis*. However, one who has been consecrated and deputed to be a dispenser of the mysteries of God is bound to fulfil his office in a worthy manner. Holy things must be treated holily. The minister acts in the name of Christ; he becomes the instrument of Christ for the sanctification of the souls of others by means of the sacraments; he would be greatly wanting in reverence and decency if, while

engaged in so holy a task, his own conscience were stained with grievous sin. An enemy of God himself, he is guilty of great presumption in undertaking such holy functions. A consecrated minister who solemnly administers a sacrament while conscious of being in a state of mortal sin certainly sins grievously. The question whether a lay person who in case of necessity baptizes another or contracts marriage in the state of sin himself sins grievously, as being an unworthy minister of the sacrament, is much disputed among divines. Many weighty authorities excuse such a minister from grave sin because he is not under so strict an obligation to put himself in the state of grace before administering a sacrament as is one who has been set aside and consecrated to that office. All citizens are bound to defend their country when threatened, but there is a special obligation to do so incumbent on those who, like soldiers, have undertaken that duty. Similarly, all should indeed treat the sacraments with proper respect, but consecrated ministers are specially bound to do so while fulfilling their office. So that it is a probable opinion that a lay person who baptizes in sin in a case of necessity, or one who marries and so ministers the sacrament in sin to the other party, does not thereby sin grievously. For the same reasons it is also probable that even a consecrated minister who while in sin administers Baptism privately in case of necessity does not sin mortally, for he then acts as a private person, not as a consecrated minister.

2. A priest who says Mass in the state of mortal sin is thereby guilty of several grievous sins. He celebrates Mass unworthily, he receives Holy Communion unworthily, and he gives himself the sacrament though he knows that he is unworthy to receive it. Some add a fourth sin, which is committed precisely by handling and administering the Blessed Sacrament in a state of sin. It is probable, however, that this last act, though wanting in due reverence, does not amount to a grievous sin. All the more is it a safe opinion that deacons and subdeacons who exercise their functions in a state of sin do not sin grievously by so doing, nor do Bishops and priests who in sin consecrate or bless pious objects, or preach the word of God.

Divines are not agreed whether a priest would commit one sin or as many sins as he administered sacraments unworthily who in a state of sin should hear many confessions or administer many Baptisms or other sacraments at the same time. If there were moral interruptions between the several sacraments, there would at least be as many sins as interruptions. But if

there were no such moral interruption, it is a probable opinion that a priest who at one time administers a sacrament to many only commits one big mortal sin. The sin takes its unity from the fact that he exercises his office on one occasion unworthily, an office which he was consecrated to perform in a worthy manner. It is not, then, necessary for a priest who has sinned by hearing confessions in sin to say how many persons he has absolved; it will be sufficient if he states how often he has heard confessions in mortal sin.

It will be sufficient for a priest who is in sin to make an act of contrition before administering any of the other sacraments, but before saying Mass and receiving Holy Communion it is necessary for such a one to go to confession. The Council of Trent, commenting on the precept of St Paul, "Let a man prove himself, and so let him eat of that bread," says that the custom of the Church has always interpreted these words as implying that no one who is conscious of mortal sin ought to approach Holy Communion without sacramental confession, however contrite he may feel. It is, of course, advisable that this should be done before a minister who is in sin administers any of the sacraments, though it is only of strict obligation before saying Mass and receiving Holy Communion.

Section III

The Duty of Administering the Sacraments

1. All who have the cure of souls are bound in justice and in charity to administer the sacraments to the members of their flock when these need them or ask for them reasonably. The obligation is principally one of justice, and it arises from the implicit contract which those who have the cure of souls enter into on assumption of office. The obligation is a grave one if the subject is in extreme or grave necessity, and even when there is no grave necessity one who has the cure of souls would commit serious sin if he frequently refused the sacraments to those who ask for them reasonably. An occasional refusal in such cases would not be a grievous sin, as although the spiritual good of which they are unjustly deprived is considerable, yet the loss can without much inconvenience be made good at another time.

The obligation of justice is so strict that those who have the cure of souls are bound even at the risk of life to administer the sacraments to their flock in extreme or in grave necessity. This obligation, however, only extends to those sacraments

which are necessary for salvation, such as Baptism and Penance; it does not extend to those which are not necessary, not even to the holy Eucharist, according to a very probable opinion. Mortal sin will be committed not only by frequent refusal of the sacraments to those who ask for them in a reasonable manner, but also by making one's self difficult to approach and by an ungracious manner of yielding to reasonable requests, inasmuch as such methods deter the faithful from exercising their just rights.

2. Ministers of the sacraments who have not the cure of souls are bound in charity to administer the sacraments to such as are in extreme or grave spiritual necessity. This obligation is less strict than that which lies on those who have the cure of souls, so that those who have no such cure will only be bound at the risk of life to administer the sacraments which are necessary for salvation to those who are in extreme necessity. But in order that this grave obligation of charity may exist there must be moral certainty that the person in question is in extreme spiritual necessity, or in other words, that he is in proximate danger of damnation unless the sacraments be administered. There must also be a reasonable certainty that the attempt to administer the sacraments will be successful; it would be hard if a minister of the sacraments were bound to imperil his life for a mere probability of being able to help another in spiritual distress. Furthermore, before so grave an obligation can be imposed on anyone it must be morally certain that he who is in spiritual necessity is unable to help himself by making an act of contrition for his sins or of perfect love of God, and that there is no one else who is able and willing to succour him in his necessity. As all these conditions are seldom verified in any concrete case, it is apparent that those who have not the cure of souls will seldom be under a grave obligation of administering the sacraments to those who are in extreme necessity at the risk of life.

Section IV

The Duty of Refusing the Sacraments to the Unworthy

1. "Let a man so account of us," says St Paul, "as of the ministers of Christ, and the dispensers of the mysteries of God. Here now it is required among the dispensers, that a man be found faithful."[1] As, then, the administration of the sacra-

[1] 1 Cor. iv 1, 2.

ments is entrusted to the ministers of the Church, they must be faithful to their charge and administer them according to the intention of Christ and the rules of the Church. These rules are chiefly contained in the Ritual and in other liturgical books. The prescribed rites are of grave obligation in serious matters, for the Council of Trent anathematized those who should assert, " That the received and approved rites of the Catholic Church, wont to be used in the solemn administration of the sacraments, may be contemned, or without sin be omitted at pleasure by the ministers, or be changed by every pastor of the churches into other new ones."[1]

Ministers are specially required to refuse the sacraments to such as are unworthy: " Give not that which is holy to dogs," said our blessed Lord.[2] The minister should have positive reasons for judging that those who ask for the sacraments of Penance and Orders are worthy to receive them. For the dispositions of the subject enter into the substance and validity of Penance, and the duty of seeing that everything is present which is required for the validity of the sacraments belongs to the minister of them. Public officials of the Church are constituted by Orders, and the public good requires that only those who are worthy should be chosen. All lawful subjects who ask for the other sacraments are presumed to be worthy unless it is certain that they are unworthy.

With special reference to the holy Eucharist the Ritual lays down that, " All the faithful are to be admitted to Holy Communion except those who are forbidden for just cause. Those who are notoriously unworthy are to be refused, such as the excommunicated, interdicted, and openly infamous, as are strumpets, those living in concubinage, usurers, wizards, sorcerers, blasphemers, and other public sinners of that kind, unless it is certain that they have repented and amended, and have made satisfaction for the public scandal which they have given " (Can. 855). However, in the judgement of theologians, it will be sufficient if such public sinners openly go to confession; in this way, according to modern discipline, they will show their amendment and make satisfaction for the scandal which they have caused, unless more is required in special cases by the bishop or by other competent authority.

The Ritual proceeds: " Let the minister also repel secret sinners when they ask in secret unless he knows that they have amended; but not when they ask publicly, and cannot be passed by without scandal." In the latter case public injury

[1] Sess. vii, c. 13. [2] Matt. vii 6.

would be done to the secret sinner, scandal would be given to others, and other inconveniences would follow, if the sacraments were refused; and these reasons justify the minister in co-operating materially with the sin of unworthily receiving the sacraments. Of course, if the minister only knows of the bad dispositions of the subject from sacramental confession, he can make no use of his knowledge out of confession.

2. It is specially laid down in the new Code of Canon Law and in the synods[1] that the priest should strive to induce all who are going to marry to approach beforehand the sacraments of Penance and the holy Eucharist. If he does not succeed in this, he may nevertheless assist at the marriage even though he knows that one or both parties are not properly disposed to receive the sacrament, for he is not the minister of Matrimony, but only the witness authorized by the Church to assist at it and to bless the parties; to refuse to assist would commonly do more harm than good. Even if one of the contracting parties knows that the other is not in a fit state to receive a sacrament of the living like Matrimony, still he will as a rule be excused from sin in ministering the sacrament to him, because he is not a consecrated minister of the sacrament, and the advantages connected with marriage are a sufficient justification for co-operating materially with the sin committed by the other party by receiving the sacrament in a state of sin.

3. If one who is unworthy were to demand the administration of a sacrament out of contempt for the Faith or to show his hatred for religion, the minister would be bound to refuse it even at the risk of his life. He must protect the sacraments which have been committed to his care from so great an indignity—which indeed would redound on God himself—even at the risk of life. Whether a minister at the risk of his life would be bound to refuse a sacrament to one who was unworthy and who demanded its administration with threats of death in case of refusal, not indeed out of contempt or hatred of the Faith, but for some other reason, is a disputed point among theologians. It is at any rate a probable opinion that the minister would not be bound to expose his life to danger, but that he might administer the sacrament to save himself, as we saw above that he might administer it to a secret sinner to avoid scandal.

4. Innocent XI condemned the proposition that instant and grave fear is a just cause for simulating the administration of the sacraments.[2] From this it follows that not only formal

[1] 1 West., d. 22; can. 1033. [2] Prop. 29.

simulation with the intention of deceiving others is wrong, as being a lie in action, but even material simulation of administering a sacrament, whereby the matter or the form of a sacrament is used without the making of the sacrament, is not justified by grave fear. The minister may not give an unconsecrated host to a sinner as Communion, nor fictitiously absolve a penitent even to avoid death. The reason is because by so doing he would abuse a holy rite, instituted by Christ, and thus be guilty of gross irreverence toward God. It is a less sin for a priest to celebrate unworthily than to pretend to say Mass and not consecrate. However, a priest who instead of absolving a penitent who is not worthy of absolution dismisses him with a blessing so as not to betray him to people who are looking on, does not simulate the administration of the sacrament in the technical sense, and he does nothing reprehensible. He does not make an irreverent use of the sacramental sign or of part of it without completing the sacrament, in which the essence of the simulation of the administration of a sacrament consists in so far as it is wrong and has been condemned by the Church.

According to Canon 731, it is forbidden to administer the sacraments of the Church to heretics and schismatics, even though they be in good faith and ask for them, unless they have first been reconciled with the Church after abjuring their errors.

CHAPTER IV

THE RECIPIENT OF THE SACRAMENTS

1. THE sacraments were instituted to sanctify the souls of men and thus to prepare them for heaven. Only living men, then, can validly receive the sacraments; dead men or other beings cannot receive them validly. Death takes place when the soul is separated from the body, but we do not know the precise moment when that separation takes place. Except putrefaction, there are no absolutely certain signs of death, and it is quite probable that the soul remains united to the body for some time after all apparent signs of life have disappeared. Under these circumstances recent medical men and divines hold that it is lawful to administer the last sacraments to one who has to all appearances been dead for an hour or two. This is especially the case when death is the result of some sudden accident. Men only, not women, are capable of receiving the sacrament of Orders, and only those who have committed actual sins after Baptism can validly receive the sacrament of Penance. As the sacraments were instituted for the Church of Christ, of which men become members by Baptism, this sacrament is a necessary condition for the valid reception of the others.

2. No special disposition or intention is required on the part of infants, who have not come to the use of reason, and of imbeciles for the validity of the sacraments which they are capable of receiving. As they have not the use of reason they are incapable of disposing themselves for the reception of the sacraments, and yet the Church has been accustomed to give them the sacraments. The practice of the Church in such matters has the very greatest authority, as the Angelic Doctor says: " The custom of the Church has the greatest authority, and it should always be followed in all things, because even the teaching of Catholic Doctors receives its authority from the Church. So that we must rather stand by the authority of the Church than by the authority of Augustine or Jerome, or of any Doctor soever."[1] With reference to infant Baptism the Council of Trent passed the following decree: " If anyone saith that little children, for that they have not actual faith,

[1] *Summa*, 2-2, q. 10, a. 12.

are not, after having received Baptism, to be reckoned amongst the faithful; and that for this cause they are to be rebaptized when they have attained to years of discretion; or that it is better that the Baptism of such be omitted than that while not believing by their own act they should be baptized in the faith alone of the Church; let him be anathema."[1]

3. On the other hand, God does not sanctify adults who have the use of reason without some co-operation on their side; justification, says the Council of Trent,[2] is the sanctification and renewal of the interior man by the *voluntary* reception of grace and the gifts of the Holy Spirit. Some wish, desire, or intention to receive a sacrament is, then, necessary on the part of adults for its validity. A positive refusal to receive a sacrament, or a neutral state of mind neither willing nor refusing it, would make the reception of a sacrament null and void. The kind of intention which is necessary and sufficient for the validity of a sacrament varies according to its nature. In Penance and Matrimony a virtual intention is required in the subject, as it is required in the minister. For in Penance the acts of the penitent enter into the substance of the sacrament, and so they must be directed by him to its confection. Matrimony is constituted by the mutual consent of the parties, and for this at least a virtual intention is necessary. An habitual intention is required in order to be baptized validly; in other words, the person baptized must have at some time intended to receive the sacrament and not revoked his intention afterward. It is a disputed point among divines whether an habitual and express intention is necessary or whether an implicit intention contained in a desire to do all that God has ordained, or in an act of perfect charity or contrition, is sufficient. The latter opinion is probable, and it may be used in case of necessity when one is in danger of death, and then only. For the sacraments, which confer benefits without imposing any great burden, a general or implicit intention, such as is contained in a desire to die like a Catholic with all the rites of the Church, is sufficient for their validity. For Orders at least an habitual intention is required.

Those, therefore, who are asleep, or are unconscious, can receive the sacraments validly, for they may have all the dispositions which are necessary. The only difficulty is about Penance, but, as we shall see, it is at least a probable opinion that absolution is valid when given to one who is unconscious, but otherwise disposed for the sacrament. However, it is

[1] Sess. vii, c. 13, de Bapt. [2] Sess. vi, c. 7.

not lawful to administer the sacraments to those who are asleep, unconscious, or out of their mind, except when in danger of death. For the subject should be in a fit state to dispose himself for the reception of the sacraments so that he may receive them with due reverence and fruit.

4. Except in Penance, neither faith nor good dispositions are required for the validity of the sacraments, as is clear from the practice of the Church, which is not accustomed to repeat sacraments received in heresy or in bad dispositions. However, the state of grace is necessary for the lawful reception of the sacraments of the living, as we have seen; and for those of the dead, faith, hope, and sorrow for sin are necessary, as the Council of Trent teaches that they are for the justification of the sinner.[1] Furthermore, for the lawful reception of the sacraments the subject must be free from all censures which deprive him of the right to receive them.

It follows from this that heretics and schismatics even when baptized may not lawfully receive the sacraments at the hands of Catholic ministers, as a general rule.[2] The sacraments are intended for those who are visibly members of the Catholic Church, and they alone have the right to receive them. If anyone else wishes to receive them, let him enter the visible Church of God. However, it is a disputed point whether the sacraments may be lawfully administered to a schismatic or heretic who is in good faith, and who is in danger of death. Although St Alphonsus and others deny that it is lawful to absolve such a person, yet the opposite opinion has its supporters, and it is in keeping with several decrees of the Roman congregations—as, for example, that of the Holy Office, July 20, 1898.[3]

The faithful are not prohibited from asking for the sacraments from ministers who they know lead bad lives, if they have good reason for so doing. Sin, indeed, is committed by the minister if he administers a sacrament while in sin, but if he does so his malice must be imputed to himself, not to those who for good reason exercise their right to receive the sacraments. Moreover, the malice of the minister cannot affect the sacraments.

Although in extreme necessity a Catholic may receive the sacraments from schismatical ministers, yet scandal to be avoided rarely permits of its being done, as Benedict XIV teaches.[4]

[1] Sess. vi, c. 6. [2] Can. 731.
[3] *Analecta Ecclesiastica*, 1898, p. 387.
[4] De Syn. vi, c. 5, n. 2.

The faithful may confess to any Catholic priest of any rite who has faculties for confession (Can. 905); and the faithful may receive Holy Communion consecrated according to any rite. But they are to be counselled to receive their Easter Communion according to their own rite. Holy Viaticum should also be received according to the rite of each one, except in case of necessity when it may be received according to any rite (Can. 866).

BOOK III

BAPTISM

CHAPTER I

THE NATURE OF BAPTISM

1. THE first of the sacraments, the door by which men enter into the Church of God, by which they are made her children and the sons of God, is Baptism. The Catechism of the Council of Trent defines Baptism as the sacrament of regeneration by water in the word. This is but expressing in other words what our Lord said to Nicodemus, " Unless a man be born again of water and the Holy Ghost he cannot enter into the kingdom of God."[1] The new birth which takes place in Baptism is the new life of grace which is given to the soul by the sacrament, and by this vivifying grace the soul which was dead to God lives to him with a supernatural life.

Baptism, then, is a total washing of the soul from the stains of sin, both original and actual, if any have been committed, and a complete cancelling of all the debt of punishment which may be due to sin. This is brought about by the infusion of sanctifying grace into the soul, together with the habits of the theological virtues of faith, hope, and charity. Moreover, by Baptism a character is imprinted on the soul by which it is known to God and his angels as that of a baptized Christian; and the person baptized becomes a member of the Church, a child of God, and heir to the kingdom of heaven.

2. By the positive will of Jesus Christ Baptism is necessary for salvation, as may be gathered from the words quoted above. This truth was defined by the Council of Trent,[2] " If anyone saith that Baptism is optional, that is, not necessary unto salvation—let him be anathema." Without Baptism, then, it is impossible to be saved, not merely because Christ commanded all to receive this sacrament, but because it infuses sanctifying grace into the soul, that nuptial garment without which no one can be admitted to the beatific vision. If, however, for one cause or another it is not possible to receive the Baptism of water, its place may be supplied by an act of perfect

[1] John iii 5. [2] Sess. vii, c. 5, de Bapt.

contrition or of the pure love of God, and by martyrdom. On this account Baptism is said by theologians to be threefold: the Baptism of water, the Baptism of desire, and the Baptism of blood.

Perfect conversion to God by contrition for sin or by charity certainly infuses sanctifying grace into the soul and forgives sin, as Holy Scripture frequently declares, and as the Council of Trent teaches.[1] In this, therefore, its effect is similar to the primary effect of Baptism, and it is rightly called the Baptism of desire. Still, after the promulgation of the New Law the Baptism of desire only produces its effect because explicitly or implicitly it contains a desire and a purpose to receive the Baptism of water, should occasion offer. Although the Baptism of desire reconciles the sinner to God, yet it does not imprint any character on the soul, nor does it necessarily remit all the temporal punishment due to sin. The extent to which it does this will depend on the intensity of the act.

Martyrdom, also, or death patiently endured for the sake of Christ or for some Christian virtue, has the same effect as the Baptism of desire. "Greater love than this," said our blessed Lord, "no man hath, that a man lay down his life for his friends."[2] Still martyrdom does not produce its effect simply as an act of love, but in a manner *ex opere operato*, by a special privilege, as being an imitation of the passion and death of Christ. Thus the Church honours as saints in heaven the Holy Innocents and other children who have been put to death for the sake of Christ. In the case of adults who have committed sin there must at least be attrition for sin in order that martyrdom may produce its effect as a kind of Baptism.

[1] Sess. xiv, c. 4. [2] John xv 13.

CHAPTER II

THE MATTER AND FORM OF BAPTISM

1. THE remote and valid matter of Baptism is natural water in a suitable state for washing one's self. It is quite immaterial whether the water be spring water, rain water, sea water, or water from a river or pond; but frozen water is doubtful matter until it is melted, because it is not suitable for washing one's self; while mud is invalid matter (Can. 737).

For solemn Baptism the Church prescribes the use of water specially consecrated for the purpose, and the same may be used for private Baptism, as also may holy water and common water. For the private Baptism of adults who have been converted from heresy and require to be baptized conditionally, the First Synod of Westminster prescribes the use of holy water.

The proximate matter of the sacrament is its use or application in the act of baptizing. This may validly be done either by infusion, or immersion, or sprinkling, provided that the water touches the head of the person to be baptized and flows so as to express the action of washing. In the Western Church, however, a triple pouring of water on the head of the person to be baptized, or a triple immersion, if such be the custom, is prescribed by the rubrics of the Ritual. Care should be taken that the water touch the skin, as the Baptism would be of doubtful validity if it merely touched the hair. Merely to lay the wet hand or finger on the skin would not be valid Baptism, and even if the wet finger were moved over the skin the validity would still be doubtful (Can. 758).

2. The form of Baptism is: " I baptize thee in the name of the Father, and of the Son, and of the Holy Ghost." Any change in this form which altered the sense would also invalidate the Baptism, as if one should say, " I baptize thee in the name of Christ," or " of the Blessed Trinity." The form should be pronounced by the minister while he pours the water, and it is clear that if one pronounced the words while another poured the water, or if one baptized one's self, the Baptism would be invalid.

CHAPTER III

THE MINISTER OF BAPTISM

1. THE ordinary minister of solemn Baptism is a priest, but as it is a parochial sacrament, its lawful administration belongs exclusively to the parish priest or to the priest who has the cure of souls in the district in which the parents of the child have their domicile or quasi-domicile. Such priest may, of course, delegate authority to any other priest to baptize in his name; if there is reasonable cause, as in case of illness or constant occupation in hearing confessions, he may commission a deacon to give solemn Baptism. The children of strangers may be baptized by the parish priest of the place, unless they can easily and without delay be baptized by their own parish priest (Can. 738, sec. 2).

In case of necessity, when there is danger of someone dying without Baptism, anyone who has the use of reason may baptize without the ceremonies. In such cases of necessity the Ritual prescribes that a priest should be preferred to a deacon, a deacon to a subdeacon, a cleric to a lay person, a man to a woman, unless the latter be preferred for the sake of decency or because she is better acquainted with the method of valid Baptism. Those who have the cure of souls should take care that the faithful, especially midwives, are instructed in the right method of administering Baptism. The Ritual also prescribes that a father or mother should not baptize their own child except when it is in danger of death and no one else can do so (Can. 742).

2. The ceremonies prescribed for solemn Baptism are of grave obligation, so that it would be a mortal sin to omit without necessity a notable part of them, as, for example, the anointings or the use of consecrated water. The child is anointed with the oil of catechumens before the actual baptizing, and afterward with the chrism. The holy oils should be kept carefully separated, and they should be renewed every year when the oils are consecrated by the Bishop on Maundy Thursday. The baptismal font, too, should be blessed on Holy Saturday with the oils consecrated on the previous Thursday. If they have not arrived in time the font should

be blessed without them, and they should be added afterward, unless, in the meantime, someone has to be baptized, and then the old oils may be used in blessing the font. If the oils threaten to be exhausted, fresh, unblessed olive oil may be added, always in smaller quantity. The same rule may be followed with regard to the consecrated water in the font. The Ritual admonishes the parish priest to take care that as far as possible names of saints should be given in Baptism, so that, by their example, the baptized person may be moved to live holily, and that he may hope to enjoy their patronage. In solemn Baptism the Latin language should be used, but certain portions may also be rendered in the vernacular, according to the Ritual approved for use in the country.

3. According to the Code of Canon Law, the proper place for solemn Baptism is the baptistery in a church or public oratory. Every parish church should have a baptismal font. If, on account of distance or for other reasons, a person to be baptized cannot be brought to the parish church, the parish priest may and ought to administer solemn Baptism in the nearest church or public oratory. Solemn Baptism should not be administered in private houses unless those to be baptized are the children or grandchildren of those who hold the chief authority in the country, or have the right to succeed to the throne, and they make the request, or if the local Ordinary for good reason in some extraordinary case thinks that it should be allowed. In these cases Baptism should be given with consecrated water, and in the chapel or in some suitable room of the house (Can. 773-776).

Adults should be baptized according to the longer form in the Ritual unless the local Ordinary for a grave reason allow the form for the Baptism of infants to be used (Can. 755, sec. 2).

Those who have attained the use of reason are their own masters in the things of God, and are considered adults with reference to Baptism (Can. 745, sec. 2, ii).

Adults who have been converted from heresy and require conditional Baptism are to be baptized privately with holy water and without the ceremonies, according to the First Synod of Westminster (Can. 759, sec. 2).

In questions concerning Baptism, infants are those who have not attained the use of reason, and those who never have had the use of reason are reckoned as infants (Can. 745, sec. 2).

Canon 760 prescribes that when Baptism is reiterated conditionally, the ceremonies are to be employed if they were not used in the first Baptism; if they were used in the first Baptism they may be used or omitted in the second at the option of the minister. This does not apply to conditional Baptism administered to adult converts.

CHAPTER IV

THE SPONSORS

1. SPONSORS, according to ecclesiastical law, are used in solemn Baptism to answer for the child baptized, to hold him during Baptism, or to receive him immediately after Baptism from the hands of the minister, and to act as his instructors in the Faith which he received and professed in Baptism. With regard to those who have Catholic parents, the sponsors may ordinarily presume that the Catholic education of the child will be sufficiently provided for by them; but otherwise the sponsors will be bound, as far as possible, to provide for it. Sponsors should be employed in private Baptism if at least one can easily be had; if this was not done, they should be employed afterwards when the ceremonies are supplied in the Church (Can. 762, sec. 2).

2. The Council of Trent ordained, "that in accordance with the appointments of the sacred canons, one person only, whether male or female, or at most one male and one female, shall receive in Baptism the individual baptized; between whom and the baptized, and the father and mother thereof, as also between the person baptizing and the baptized, and the father and mother of the baptized, and these only, shall spiritual relationship be contracted. The parish priest, before he proceeds to confer Baptism, shall carefully inquire of those whom it may concern what person or persons they have chosen to receive from the sacred font the individual baptized; and he shall allow him or them only to receive the baptized; he shall register their names in the book, and teach them what relationship they have contracted, that they may have no excuse on the score of ignorance. And if any others besides those designated should touch the baptized, they shall not in any way contract a spiritual relationship, any constitutions that tend to the contrary notwithstanding."[1]

Spiritual relationship between the sponsors and the parents of the baptized person and between the minister of Baptism and the parents was abolished by Canon 768.

[1] Sess. xxiv, c. 2, de Ref.

In order to be sponsor validly a person must be:

(1) Baptized, have the use of reason, and have the intention of being sponsor.

(2) He must not belong to any heretical or schismatical body, nor be excommunicated by a condemnatory or declaratory sentence, nor infamous with the infamy of law, nor excluded from acts of law, nor a deposed or degraded cleric.

(3) He must not be the father, mother, or spouse of the person baptized.

(4) He must be designated by the person to be baptized, or by his parents or guardians, or failing these by the minister of Baptism.

(5) He must physically hold or touch the baptized person in the act of Baptism, by himself or by his proctor, or immediately raise or receive him from the sacred font or from the hands of the person baptizing (Can. 765).

3. To be admitted as sponsor lawfully a person—

(1) Must have reached the fourteenth year of his age, unless the minister judge otherwise for a good reason.

(2) He must not be excommunicated for a notorious crime, or excluded from acts of law, or infamous with the infamy of law, but without sentence having been passed, or under interdict, or otherwise publicly criminal, or infamous by infamy of fact.

(3) He must know the rudiments of the Faith.

(4) He must not be a novice or professed in any religious institute, unless there is necessity and the express leave be had of at least the local superior.

(5) He must not be in sacred orders unless he have the express leave of his own Ordinary (Can. 766).

Others are sometimes prohibited by provincial law, as the following in England: those who have not been confirmed or who have not made their Easter duties, and ecclesiastics.

One may be sponsor by proxy, and then the principal, not the proxy, contracts spiritual relationship with the person baptized.

Sponsors are not necessary when Baptism is reiterated conditionally, unless the same person can be had in the second Baptism as acted as sponsor in the first (Can. 763).

CHAPTER V

WHO MAY BE BAPTIZED?

1. ANY living human being who has not yet been baptized is capable of receiving this sacrament. If he has the use of reason, an habitual intention at least to receive Baptism is necessary for its validity, though, as we saw above, it is probably sufficient if it be implicitly contained in a wish to do all that God requires, or any similar act of the will. In children who have not attained the use of reason and in imbeciles no intention is required for the reception of Baptism; the intention of the Church supplies for it.

For the lawful reception of this sacrament by adults who have the use of reason all those dispositions are necessary which, as the Council of Trent teaches,[1] are required for the justification of the sinner. They must, then, have faith, and believe all those truths which God has revealed and which the Church proposes to our belief. In particular they must know and believe explicitly the being of God, that he rewards and punishes men according to their deserts, the Blessed Trinity, the Incarnation, the Apostles' Creed, the Decalogue, and the Lord's Prayer. In other words, they should be properly instructed in the catechism. They should also approach the sacrament with hope, and at least with that kind of sorrow for sin which is called attrition.

2. Catholic parents are bound to see that their children are baptized, and that as soon as can conveniently be done. According to approved theologians, it would be a serious sin if the Baptism of a child were put off for a month without good reason. As Catholic parents are subjects of the Church, and they are bound to obey her laws, no injustice would be done if a child of such parents were baptized without or against their wish. Non-baptized parents are not subject to the Church, and, as St Thomas teaches, it would be against natural justice if an infant of theirs who is in no danger of death were to be baptized without their consent. When a non-baptized child is in danger of death the necessity of providing for its eternal salvation overrides all other private considerations (Can. 750, sec. 1).

[1] Sess. vi, c. 6.

When a child comes to the use of reason he becomes his own master in the things of God, and absolutely he may ask for and receive Baptism without the consent of his parents. Still in practice great caution is needed in such a matter. Of course, if the parents agree to allow the child to be brought up a Catholic, and it has Catholic sponsors, the difficulty will cease. But if it is baptized against their will, and remains subject to their control in other respects, the faith of the child will be in constant danger, especially as it can hardly be very firmly established before mature age. Ordinarily, then, children should not be baptized without their parents' consent until they reach an age when their convictions are firmly rooted and there is every prospect of their perseverance.

3. It would be a grave sin knowingly to baptize again one who has already been validly baptized. So that when a child has been baptized by a nurse or midwife by reason of apparent danger of death, inquiry should indeed be made as to the manner of the Baptism, but if the matter and form were rightly applied the Baptism must not be repeated; only the ceremonies must be supplied in the Church. In case of doubt concerning the validity of the former Baptism, it should be repeated conditionally.

When heretics are converted to the Faith, inquiry should be made in every case concerning their Baptism. If it is found either that they were never baptized, or that the Baptism was invalid, they must be baptized again absolutely. If, after inquiry, a prudent doubt remains as to whether they were ever baptized, or as to whether their Baptism was valid, they should be baptized again conditionally, and in secret so as to avoid scandal.

If it is found that their Baptism was valid, they should only abjure their errors, and make a profession of the Catholic faith.

4. An aborted fœtus, if it is still living, should be baptized, rupturing the membranes if necessary, and pouring water over it while at the same time pronouncing the form of Baptism (Can. 746).

The Ritual admonishes ministers of the sacrament to be cautious about baptizing monsters. If a monster has not a human shape, but is a mere mass of fleshy growth, it should not be baptized at all. If there are two heads and two bodies, there are two persons, and both should be baptized, separately if there is time, otherwise under a common form. If it is doubtful whether there are two persons or only one, Baptism

should be given absolutely to one, and again conditionally to the other, under the form, " If thou art not baptized, I baptize thee," and so forth.

The Ritual also prescribes that if a woman dies in pregnancy the fœtus should be extracted, and if still living should be baptized. This, of course, supposes that there is a skilled person present who judges that the fœtus is still alive, and who is capable of performing the necessary operation.

The question also occurs whether a mother, who is still living but who cannot bring forth her child alive, is bound to undergo a serious operation like Caesarian section in order to insure the eternal welfare of her child by Baptism. Of course she may not undergo the operation if it would be the immediate cause of her own death. The mother must not be killed even for the salvation of the child. Even if her health and condition are such that in all probability she could stand the operation, yet it is probable that she is under no obligation to submit to it. The child can with sufficient certainty be baptized in the womb, and even if the operation were performed, greater certainty that the child would still be alive and capable of Baptism can seldom be obtained. In such circumstances no strict obligation to undergo a serious operation can be imposed on the mother.

BOOK IV

CONFIRMATION

CHAPTER I

THE MATTER OF CONFIRMATION

1. CONFIRMATION is a sacrament by which a baptized person receives grace boldly to profess and defend the Faith which he received in Baptism. It is, then, complementary to Baptism; as Baptism makes a man a follower of Christ, Confirmation makes him a soldier of Christ. It is a sacrament of the living, and gives an increase of sanctifying grace to the soul together with the right to receive those actual graces which will be needed to resist temptation and to lead a good Christian life. It is also one of the three sacraments that imprint a character on the soul.

2. Divines are not agreed as to what constitutes the matter of Confirmation. Some hold that the general imposition of hands by the bishop who confirms at the beginning of the rite is the essential matter; while the subsequent anointing of each person to be confirmed belongs to the matter accidentally. Others maintain that this general imposition of hands and the anointing form the essential matter of the sacrament. The common opinion is that the anointing with chrism, together with the simultaneous imposition of the hand of the Bishop on the forehead of the confirmed person while he makes on it the sign of the cross with the chrism, is the adequate and essential matter of the sacrament.

Chrism, which is thus the remote matter of Confirmation, is made of olive oil and balsam. It is a disputed point whether the mixture of balsam is only of precept or whether it is necessary for the validity of the sacrament. However, balsam of any country will suffice. The chrism thus made must be blessed by a bishop, and this, according to the common opinion, is necessary for the validity of the sacrament.

Three kinds of holy oils are blessed by the bishop on Maundy Thursday—the oil of the sick, with which Extreme Unction is given; the oil of catechumens, with which those about to be baptized are anointed in administering Baptism; and chrism.

It is probable that any one of these holy oils will serve for the others, so that Confirmation given with oil of the sick would be probably valid. Still it is not lawful to follow this opinion except in case of necessity.

A fresh supply of holy oils should be procured every year after they have been blessed by the bishop on Maundy Thursday, and the old ones burned. However, if the new oils cannot be obtained at the proper time, especially in the missions where Vicars Apostolic without episcopal consecration have faculties to give Confirmation, the old oils may be used as long as the difficulty of obtaining new ones lasts.

3. The form of Confirmation is, " I sign thee with the sign of the cross, and I confirm thee with the chrism of salvation, in the name of the Father, and of the Son, and of the Holy Ghost." There is some doubt as to whether the invocation of the Blessed Trinity is an essential part of the form, chiefly because it does not appear along with the other part in the form used in the Eastern Church. The question belongs to dogmatic theology, but briefly we may say that if it is an essential part of the form, the invocation is elsewhere in the Oriental rite.

CHAPTER II

THE MINISTER OF CONFIRMATION

THE ordinary minister of Confirmation is a bishop, but the Pope may, and in the missions frequently does, delegate faculties to a priest to administer the sacrament with chrism blessed by a bishop. In other words, a bishop is the ordinary official in the hierarchy who has the power to admit Christians into the army of our Lord by confirming them, but the General of the army in special cases empowers a simple priest to do this. It is a disputed point whether the Pope could empower a simple priest to bless the chrism.

By law Cardinals, Abbots and Prelates *of no diocese*, Prefects and Vicars Apostolic have the faculty of giving Confirmation within their territory during their tenure of office (Can. 782, sec. 3).

A bishop may not give Confirmation outside his diocese without the leave of the bishop of the place; but within his diocese he may confirm all who come to him, whether they are his subjects or not, unless their own bishop has expressly forbidden it (Can. 783). A bishop is bound to give his subjects who have not been confirmed the opportunity of receiving the sacrament.

He must also be prepared to administer Confirmation when a reasonable request is made for it by any of the faithful subject to his charge.

In case the bishop himself is prevented from administering Confirmation he should provide that his subjects have the opportunity of receiving it at least every five years (Can. 785).

CHAPTER III

THE SUBJECT OF CONFIRMATION

1. ANYONE is capable of being confirmed who has not yet received this sacrament and who has been baptized. For the validity of the sacrament the use of reason is not necessary, but adults who have the use of reason must have at least an habitual intention of receiving the sacrament. No one may lawfully receive this sacrament who is not in the state of grace. Moreover, according to modern discipline, Confirmation is only given to those who have been well instructed in Christian doctrine and know well what is required of a good Catholic. Before Confirmation is administered, the opportunity should be taken to give special instructions in Catholic faith and practice to those who are about to receive the sacrament (Can. 1330).

2. The First Synod of Westminster[1] prescribes that priests who have the cure of souls should do all in their power to have children confirmed, especially if they be of the humbler sort, so that they may be able to resist the temptations to which their faith will afterward be exposed. Canon 787 says that no one may neglect to receive Confirmation on occasion being offered, and that parish priests are to take care that the faithful receive it opportunely.

3. For Confirmation there should be one sponsor who presents one or two to be confirmed. He himself should be confirmed, should have the use of reason, and should have the intention of fulfilling his office. He should not be a heretic or schismatic, or criminal, nor the father, mother or spouse of the person to be confirmed. He should be lawfully designated, and should physically touch the person confirmed by personal contact or by proxy.

That he may be lawfully admitted he should not be the same who acted as sponsor in Baptism, and he should be of the same sex as the person confirmed (Can. 794-796).

Spiritual relationship arises between him and the person confirmed (Can. 797). But it is not a diriment impediment of marriage (Can. 1079).

[1] d. 17.

BOOK V

THE HOLY EUCHARIST

PART I

THE SACRAMENT OF THE EUCHARIST

CHAPTER I

THE NATURE AND EFFECTS OF THE EUCHARIST

1. THE Council of Trent teaches "that in the august sacrament of the holy Eucharist after the consecration of the bread and wine our Lord Jesus Christ, true God and man, is truly, really, and substantially contained under the species of those sensible things. For neither are these things mutually repugnant—that our Saviour himself always sitteth at the right hand of the Father in heaven, according to the natural mode of existing, and that nevertheless he be in many other places sacramentally present to us, in his own substance, by a manner of existence which, though we can scarcely express it in words, yet can we by the understanding, illuminated by faith, conceive, and we ought most firmly to believe, to be possible unto God; for thus all our forefathers, as many as were in the true Church of Christ, who have treated of this most holy sacrament, have most openly professed that our Redeemer instituted this so admirable a sacrament at the Last Supper, when, after the blessing of the bread and wine, he testified in express and clear words that he gave them his own very body and his own blood. And this faith has ever been in the Church of God, that immediately after the consecration the veritable body of our Lord and his veritable blood together with his soul and divinity are under the species of bread and wine."[1] It does not belong to the province of moral theology to prove or to defend this dogma of our Faith. We accept the teaching of the Church that the holy Eucharist is a sacrament in which under the species of bread and wine we receive Jesus Christ, the spiritual food of our souls. It is not merely a sacrament while it is received by the communicant, or while it is consecrated

[1] Sess. xiii, c. 1, 3.

by the priest in Mass. It is a permanent sacrament, under which our Lord remains present as long as the sacred species remain unchanged. It gives sacramental grace to the soul while it is being swallowed as food, and the divine presence remains in the communicant until the species of bread and wine are corrupted.

Although in the consecration there is a twofold matter and form, yet these constitute only one sacrament, for the species of bread and wine together signify a complete spiritual repast, just as food and drink go to make one meal for the body.

2. The effects which the holy Eucharist produces in the soul are set forth by the Council of Trent: " Our Saviour wished that this sacrament should be received as the spiritual food of souls, whereby may be fed and strengthened those who live with his life who said, ' He that eateth me, the same also shall live by me '; and as an antidote, whereby we may be freed from daily faults, and be preserved from mortal sins. He would, furthermore, have it be a pledge of our glory to come, and everlasting happiness, and thus be a symbol of that one body whereof he is the head, and to which he would fain have us as members be united by the closest bond of faith, hope, and charity, that we might all speak the same things, and there might be no schisms amongst us."[1] Besides being an antidote by which we are preserved from mortal sin, it is a very probable opinion that if the Eucharist is received by one in a state of mortal sin, of which he is not conscious and to which he is not attached, that sin will be forgiven. For the sacraments give grace to all who put no obstacle in their way, and such a communicant cannot be said to put an obstacle to the grace of the sacrament. But the entrance of grace expels all mortal sin from the soul. This is the teaching of St Thomas[2] and many other theologians.

[1] Sess. xiii, c. 2.

[2] *Summa*, 3, q. 79, a. 3.

CHAPTER II

THE MATTER AND FORM OF THE EUCHARIST

1. THE remote matter of the Eucharist is twofold—wheaten bread and wine of the grape. Barley bread, or bread made from oats or rye, or any other kind of grain or vegetables or fruits, is invalid matter. The wheaten bread must be baked with water, not boiled, or mere dough. If baked with oil or milk or butter, it will be doubtful matter. The wine must be genuine juice of the grape, not made artificially; wine made from any other kind of fruit will be invalid matter. If the wine has become vinegar, it is changed substantially, and will not serve for Mass; if it has only begun to get sour, it will be consecrated validly, but the priest who uses it sins grievously. There is some controversy as to whether frozen wine could be consecrated. The rubrics prescribe that if the precious blood is frozen after the consecration it should be liquefied again by putting warm cloths about the chalice and then consumed. It is clear, then, that freezing does not change the species substantially so as to render our Lord no longer present under them; it follows from this that freezing does not prevent the wine being consecrated.

Unfermented bread is used for the Eucharist in the Western Church, and fermented in the Oriental rites. Members of the two Churches are bound under grave precept to follow their respective rites, even if a Western priest were for a time in the East (Can. 816).

Because water came forth from the opened side of our Redeemer with his blood, the Church has commanded that in saying Mass a little water, not more than a fifth or at most a third part of the wine, should be mixed with the wine in the chalice. If the wine of a country is of a poor quality and difficult to keep, a little alcohol may be added to it to preserve it, but not so as to make more than 12 or 18 per cent. of the whole. No other matter may be added either to the flour or to the wine which are used for the Blessed Eucharist, and the greatest care should be taken both by bishops and priests to insure the use of only genuine matter in the confection of this sacrament.

2. The form of consecration for the bread is, "For this is my body," and for the chalice, "For this is the chalice of my blood of the New Testament, the mystery of faith, which shall be shed for you and for many unto the remission of sins." Any change in these forms which would make the sense different would also make them invalid.

There is a controversy among theologians as to whether the whole of the above form for the consecration of the chalice is essential, or whether it would be sufficient for the validity of the consecration to say only, "This is the chalice of my blood." It is very probable that these words alone constitute the essential form for the consecration of the chalice, though, of course, the fuller form must always be used. For these words alone signify the real presence of our Lord; the rest are merely a further declaration or explanation of them. Besides, "This is my body" constitutes the valid form for the consecration of the bread, and so, by analogy, "This is the chalice of my blood" should constitute the valid form for the consecration of the wine.

3. For the valid consecration of the Eucharist the priest must not only use the proper matter according to the institution of Christ, but that matter must be physically present, not far distant from him, when he pronounces the form of consecration. This essential condition is required by the sense of the form, "This is my body," which indicates that the matter to be consecrated is near the priest, so that it can be indicated by the demonstrative pronoun. Hence a priest in one room could not consecrate bread and wine in another, or behind his back, or, as it would seem, locked up in the tabernacle. Moreover, the matter must be determined by the intention of the priest; he would not consecrate a host which had been left on the altar for him to consecrate, but about which he knew nothing, and which he had no intention to consecrate. A difficulty sometimes arises when a priest has been asked to consecrate the ciborium which is placed on the altar by the sacristan, but which the priest afterward forgets to take and place on the corporal for consecration. What is intended for consecration should be placed on the corporal and on the altar-stone of sacrifice. Inasmuch as this was not done, and it would be wrong to intend to consecrate a ciborium which had not been placed on the corporal, it would seem at first sight that such a ciborium is not consecrated. It is, however, better to make a distinction. If the priest had intended to consecrate the ciborium and during Mass had noticed its presence, though he did not advert to its being off

the corporal, it would certainly be consecrated. If, on the contrary, after being notified in the sacristy about consecrating the ciborium, he forgot all about it, and never adverted to its presence on the altar, the consecration will be doubtful; and hosts thus doubtfully consecrated should on no account be given as Communion to the faithful, but should be consecrated conditionally in another Mass, or if they are few in number they might be consumed by the priest before taking the ablutions.

Furthermore, for the lawful consecration of the matter, the hosts must be whole, clean, and of the usual size and shape; the chalice and ciborium must be uncovered, and the consecration must be in Mass as it is prescribed to be said and under both kinds. If the ciborium or chalice are by mistake left covered, the consecration will be valid, for all the conditions required for validity are fulfilled. Hosts to be consecrated should be on the corporal at the offertory when the victim is set aside for the sacrifice, but if this has not been done, they may be received up to the canon, or for grave reason even up to the consecration, but the oblation should be mentally supplied.

CHAPTER III

THE MINISTER OF THE EUCHARIST

1. ONLY a priest can say Mass and consecrate the Eucharist, and a priest is also the ordinary minister who distributes Holy Communion to others. If, however, the priest is occupied and is unable to give Holy Communion himself, he may delegate faculties to a deacon who is the extraordinary minister of the Eucharist. In case of necessity, especially when there is danger of dying without receiving the Viaticum, and there is no priest or deacon to give it, a simple cleric, or even a lay person, may administer Holy Communion to himself or to another. It was not very unusual in the primitive Church for laymen to do this, but nowadays the occasion would seldom arise.

2. Any priest within Mass, and if he celebrates privately, also immediately before and immediately after Mass, can administer Holy Communion. This may be done wherever he says Mass, even in a private oratory, unless for some good reason the local Ordinary forbids it in particular cases (Can. 846, 869).

It is the right and duty of the parish priest within his parish to carry Holy Communion publicly to the sick, even though they be not his parishioners. Other priests can only do this in case of necessity, or with at least the presumed leave of the parish priest or of the Ordinary (Can. 848).

To carry Viaticum to the sick, whether publicly or privately, also belongs exclusively to the parish priest. Any priest can carry Holy Communion to the sick privately (Can. 849).

3. All who have the cure of souls are bound to administer the Eucharist to their flock, not only when these are under an obligation to receive it, but whenever they reasonably ask for it. This obligation is grave, but it does not bind with proximate danger of death from catching disease or from some other cause, nor is a single refusal of the sacrament necessarily a grave sin, for the loss of it may easily be made up on another occasion. Priests who have not the cure of souls may sometimes be bound to administer Holy Communion, not out of justice, but out of charity.

4. For the lawful administration of Holy Communion the minister must be free from all censures which deprive him of

the right to administer it; he must be in the state of grace, and he must follow the rubrics laid down by the Church in the Missal and Ritual.

According to Canon 867, Holy Communion may be administered on any day, but on Good Friday only as Viaticum to the sick.

On Holy Saturday Holy Communion may not be given to the faithful except in High Mass, or immediately after it and in continuation of it.

Holy Communion can only be administered at the times when Mass may be said, unless there be some reasonable cause for doing otherwise.

But Viaticum may be given at any time of the day or night.

The Blessed Sacrament should not be taken from the church except when it is carried to the sick, and then with all the marks of honour prescribed by the rubrics of the Ritual. However, in English-speaking countries the Holy Eucharist cannot be taken to the sick publicly, so it is carried in a small pyx enclosed in a bag specially made for the purpose, and suspended by a cord or chain from the priest's neck. The priest should have on a stole underneath his coat.

5. If a consecrated host falls on the ground or on the Communion cloth, the place should be marked and afterward washed, and the water poured into the piscina. If the Precious Blood is spilled, the priest should suck it up as far as possible, and afterward the place should be well washed, scraped, and the water and scrapings poured into the piscina. If a consecrated host fall on the beard or clothes of a communicant, the place on which if fell need not be washed. If it falls on the breast or dress of a woman, she should take it reverently in her fingers and give it to the priest, who will then administer it to her as Communion.

If, while he is still vested, a priest discovers what seem to be particles consecrated in his Mass, the rubrics direct that he should consume them, even though no longer fasting; if he has put off the sacred vestments, or if the particles do not belong to his Mass, they should be reserved for another priest to consume after his own Communion, or placed in the tabernacle.

If the Blessed Sacrament is vomited by a sick man, the sacred species should be carefully separated and placed in a vessel in the tabernacle until they corrupt, when they should be thrown into the piscina. Corruption will more quickly take place, and any disagreeable odour will be avoided, if a little water be put into the vessel.

CHAPTER IV

THE RESERVATION OF THE EUCHARIST

1. THE Ritual prescribes that the parish priest, or one who has the cure of souls, should take care that some consecrated particles, in sufficient number for the use of the sick and for the Communion of the rest of the faithful, should be always reserved in a clean pyx of solid and decent material, well closed with its own lid, covered with a white veil, and as far as possible in an ornamented tabernacle kept locked with a key. This key should be in the keeping of the priest, not in that of the sacristan or other person. As a rule the pyx or ciborium is of silver, and gilded inside. There seems to be no strict law prescribing that it should be consecrated or even blessed, though there is a form for blessing it in the Ritual.

The Blessed Sacrament, then, must be thus reserved for the use of the faithful in all cathedrals, parish churches, and chapels of ease attached to parochial churches. Religious orders of men and women who take solemn vows have the privilege of reserving the holy Eucharist in their churches. It can only be reserved in other churches or oratories by special indult from the bishop, or from the Holy See in the case of strictly private oratories (Can. 1265).

2. The Ritual further prescribes that the tabernacle should be decently covered with a veil, that nothing else besides the Blessed Sacrament should be put in it, and that it should be placed on the high altar, or on another if this would conduce to greater reverence toward the holy Eucharist, so that it would be no obstacle to sacred functions or ecclesiastical offices. Several lamps, or at least one, should always be kept burning before it night and day. The lamps should be fed with olive oil, but if the church is very poor the bishop may allow vegetable or mineral oil to be used. Gas or electric lamps should not be tolerated. One lamp must be kept burning under pain of grievous sin.

The veil of the tabernacle should be white or in keeping with the colour of the day, but never black (Can. 1269-1271).

3. The particles taken for consecration should be fresh, not more than fifteen days or at most a month old, and they should be renewed every eight, or at most fifteen, days, though in this matter regard should be had to the dampness or dryness of the place and season (*cf.* Can. 1272).

CHAPTER V

THE SUBJECT OF THE EUCHARIST

ARTICLE I

The Necessity of the Eucharist

1. THE holy Eucharist can be received only materially by one who is not baptized and who consequently is incapable of receiving the other sacraments; it is received spiritually by one who ardently desires to receive it with the proper dispositions; it is received sacramentally when it is really received by one who has been baptized. The sacramental reception of the Eucharist is not a necessary means of salvation, for it is a sacrament of the living and supposes the grace of God in the soul, and a soul in the state of grace has everything which is necessary for salvation. Divines dispute whether the Eucharist is a necessary means for preserving the life of grace in the soul. It is, indeed, the ordinary food of the Christian soul, as bread is the ordinary food of the body, but as there is other spiritual food which may be taken, and notably prayer, and this may supply for the want of the ordinary food, the better opinion holds that the Eucharist is not strictly necessary even for the preservation of the life of grace in the soul. However, it is certainly necessary by divine and ecclesiastical precept. The divine precept is manifest from the words of our Lord: " Unless you eat the flesh of the Son of man and drink his blood you shall not have life in you."[1] Not that these words imply that Communion under both kinds is of divine law, for he who receives the sacrament under one species receives the body and blood of Christ with his soul and divinity. Moreover, as the Council of Trent explains,[2] he who made use of those words also said, " He that eateth this bread shall live for ever."[3] The Church, therefore, for just and weighty reasons has forbidden Communion under both kinds, using the power given to her by Christ with reference to the dispensation of the sacraments, though she has no authority to change their substance.[4]

[1] John vi 54.
[2] Sess. xxi, c. 1.
[3] John vi 59.
[4] Trent, sess. xxi, c. 2.

This divine precept must be fulfilled at least at the time of death, when it is of the greatest importance, and also sometimes during life. How often it must be received to satisfy the divine precept is uncertain, but the Church has determined the divine law by ordering all the faithful who have come to years of discretion to receive Holy Communion at least once a year, at Easter.[1] Those, however, who desire to lead a good Catholic life, are by no means content with yearly Communion; they receive it once a month or still more frequently.

2. According to the general rule, children become subject to and bound to obey the positive laws of the Church when they reach the age of seven. However, before the new Code of Canon Law came into force it was usual to defer a child's first Communion until he had reached the age of nine or twelve. The Code (Can. 859) interprets the phrase "years of discretion," used by the Lateran Council, to mean the same as to attain the use of reason, and so, now, children are bound to make their Easter Communion when they are seven years of age, unless, indeed, for some good reason it is judged advisable to abstain for a time. This obligation, as far as it affects those under the age of puberty, falls chiefly on those who have care of them—that is, on parents, guardians, confessors, teachers, and parish priests (Can. 860).

Canon 863 prescribes that the faithful are to be exhorted to receive Holy Communion frequently, and even daily, according to the rules laid down in the decrees of the Holy See, and that those who attend Mass should dispose themselves to receive Holy Communion not only spiritually, but sacramentally.

Daily Communion may not be refused to anyone who is in the state of grace and who has a right intention. There should be suitable preparation and thanksgiving, and that daily Communion may be practised with more prudence and with greater fruit, the advice of the confessor should be asked.

It is a disputed point whether one who is now in danger of death and who has within the last few days received Holy Communion is bound by divine precept to receive Viaticum. Although any good Catholic would certainly receive it again, yet the obligation to do so is not clear, because the previous Communion in all probability satisfies the divine law. If one becomes dangerously ill on the day on which he has received Holy Communion out of devotion, it was similarly a disputed point whether he might, or was bound to, receive it again as Viaticum. Ordinarily, indeed, no one should receive Holy

[1] 4 Lat., c. 21; can. 859.

Communion twice on the same day, but in this case he may do so, though he is not bound to do so, for the Code only says that it is very much to be desired (Can. 864, sec. 2).

3. Holy Communion should not be given to those who have lost the use of reason, but if they have lucid intervals it may then be given if there be no danger of irreverence. To those who are in danger of death, and have lost the use of their senses, it may be given if they can swallow, and there is no danger of irreverence; and it should be given as Viaticum to criminals condemned to death if they are in the proper dispositions. Reverence forbids it to be given to those who are suffering from constant coughing, and to those who cannot retain any food on the stomach, unless they have been free from vomiting for six hours or so.

ARTICLE II

The Dispositions Requisite for the Reception of the Eucharist

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SECTION I

The Dispositions of the Soul

1. Besides having sufficient knowledge of what the Eucharist is, he who receives it should be in the state of grace and free from mortal sin. The presence in the soul of venial sin unrepented of is indeed a defect and an obstacle to the fullest outpouring of God's grace, but it is not a new sin to receive Holy Communion with only venial sins on the soul. But it is a grievous sacrilege to receive the Eucharist while conscious of being in mortal sin, "For he that eateth and drinketh unworthily, eateth and drinketh judgement to himself, not discerning the body of the Lord." It is not sufficient for one who is conscious of mortal sin to recover the state of grace by making an act of perfect contrition before Communion; he is bound to go to confession. This is taught us by the Council of Trent:[1] "Wherefore he who would communicate ought to recall to mind the precept of the Apostle, *Let a man prove himself*. Now ecclesiastical usage declares that necessary proof to be, that no one conscious to himself of mortal sin, how contrite soever he may seem to himself, ought to approach to the sacred Eucharist without previous sacramental confession. This, the Holy Synod hath decreed, is to be invariably observed

[1] Sess. xiii, c. 7.

by all Christians, even by those priests on whom it may be incumbent by their office to celebrate, provided the opportunity of a confessor do not fail them; but if in an urgent necessity a priest should celebrate without previous confession, let him confess as soon as possible." No one, then, who is conscious of mortal sin may go to Holy Communion without sacramental confession, unless he is under some necessity of receiving the Eucharist and there is no opportunity of going to confession. There will be such necessity as is here contemplated if a priest has to say Mass for his people on a day of obligation, or to consecrate the Viaticum for a dying person, or if Communion must be received to avoid scandal or to satisfy the Easter precept. There is no opportunity of going to confession if there is no priest present who can give absolution, and it would be a serious inconvenience to go to one at a distance. Even when in these circumstances a priest who is in sin has said Mass with contrition indeed, but without confession, he is commanded by the Council of Trent to go to confession as soon as possible afterward. This is a strict ecclesiastical law, but according to the mind of the Council it only binds priests, not laymen (Can. 807, 856).

2. When one has been to confession with a view to going to Holy Communion, but forgot to mention some grievous sin which he afterward remembers, he is not obliged to repeat his confession before Communion; it will be sufficient if he mentions it in his next confession. The reason is because the forgotten sin was indirectly forgiven by the absolution which he received, and he has proved himself sufficiently according to the words of the Apostle.

Even if there be not sufficient time to make a full confession before Communion, still confession is obligatory, as it is also when the penitent has reserved cases, for now in case of necessity any confessor may absolve directly from reserved cases.

Section II

The Dispositions of the Body

1. Although God looks to the soul and its dispositions rather than to externals, yet, as the Ritual says, those who communicate should approach the altar with humble deportment, and their dress and everything about them should show forth the reverence which they feel for the Blessed Sacrament. Reverence taught the first Christians that the holy Eucharist should be the first food taken in the day, so that fasting Com-

munion very soon came to be a universal practice in the Church. St Augustine says that it was the custom throughout the whole world in his time, and he traces it back to the times of the Apostles.[1] The Council of Constance says: "This present council declares, decrees, and defines, that although Christ instituted and gave this venerable sacrament to his disciples under both species of bread and wine after supper, yet notwithstanding, the laudable authority of the sacred canons and the approved custom of the Church has and keeps this observance that this sacrament ought not to be consecrated after supper nor received by the faithful unless they be fasting, except in case of sickness or of some other necessity allowed and admitted by law and by the Church."[2]

The rubrics of the Missal[3] contain the following: "If anyone has not kept fast after midnight, though he has taken only water or other drink or food, even as medicine, and in however small a quantity, he cannot communicate or celebrate. If remnants of food remaining in the mouth are swallowed, they do not hinder Communion, since they are not taken as food, but with the saliva. The same holds good if in washing the mouth a drop of water is swallowed inadvertently" (*cf.* Can. 858).

The law of the Church, then, with reference to fasting Communion is that the Eucharist may not be received by one who has not kept strict fast from all food and drink, even in the smallest quantity, since midnight. If Holy Communion is received shortly after midnight, there is no obligation to fast for some time before midnight, although reverence would dictate the advisability of such a course. The law of fasting has been made out of reverence for the Blessed Sacrament, so that violations of it are against the virtue of religion and sacrilegious.

To constitute a violation of the fast, what is taken must be of the nature of food or drink. Pebbles, wood, paper, hairs are not food, and if swallowed do not hinder Communion. The same is probably to be said of bits of the nails of the fingers, which some people have a habit of biting. The food or drink must also be taken as food or drink, not *per modum respirationis*, as is said, and must be from without, not from within the mouth. Taking snuff, or smoking, or inhaling a flake of snow with the breath, do not, then, hinder Communion, nor the swallowing of blood from the gums or from inside the lips.

[1] Decretum Gratiani, c. 54, D. 2, de consec.
[2] Sess. xiii. [3] De def. ix.

Midnight may be reckoned according to the time publicly observed in the place, or by the true time according to the sun, or by the mean time.

2. The law which prescribes fasting Communion is a positive ecclesiastical law and admits of exception and excuse. Thus, when in danger of death, from whatever cause, one may receive Holy Communion not fasting. This may also be done if it is not possible to abstain from Communion without grave scandal or serious loss of reputation; or when the Blessed Sacrament is in danger of being profaned; or in order to complete the sacrifice of the Mass left unfinished by another priest from sudden illness; or probably in order to consecrate the Viaticum for a dying person who otherwise would be deprived of it. The common opinion is that Mass may not be said by a priest not fasting merely in order that his people may hear Mass on a Sunday; but this reason, taken together with some other, might justify the action.

There used to be a controversy among divines as to whether one who is sick but not in danger of death, and yet cannot observe the fast before Communion, may be allowed sometimes to communicate not fasting. This controversy has been set at rest by the decree of Pius X, December 7, 1906, and by Canon 858, sec. 2. The law now allows those who have been sick in bed for a month, without a well-grounded hope of their speedy recovery, although they may have taken something by way of drink or medicine, to receive with the advice of their confessor Holy Communion once or twice in the week.

After receiving Viaticum a sick person who continues to live for some time afterward may receive Holy Communion again, practically as often as his devotion urges him thereto and the priest's occupations will allow of its being brought to him. As long as he remains in danger of death, Holy Communion should be given as Viaticum, with the form, *Accipe frater*. No merely material uncleanness without moral fault, or mere bodily unsightliness, is a bar to Holy Communion. Married people are advised to abstain from marital intercourse before going to Holy Communion, but there is no strict obligation to do so.

Viaticum should be given to children in danger of death if they can distinguish it from ordinary food and pay it reverent adoration (Can. 854, sec. 2).

PART II

THE EUCHARIST AS A SACRIFICE

CHAPTER I

THE NATURE OF THE SACRIFICE OF THE MASS

1. THE Council of Trent teaches that the Eucharist is not only a sacrament but is also a sacrifice, instituted by our Lord at the Last Supper to represent and perpetuate the memory of the sacrifice which he was about to offer on the Cross, and to apply its fruits to the souls of men. "He therefore, our God and Lord, though he was about to offer himself once on the altar of the Cross unto God the Father by means of his death, there to operate an eternal redemption; nevertheless, because that his priesthood was not to be extinguished by his death, in the last supper, on the night in which he was betrayed —that he might leave to his own beloved Spouse the Church a visible sacrifice, such as the nature of man requires, whereby that bloody sacrifice, once to be accomplished on the Cross, might be represented, and the memory thereof remain even unto the end of the world, and its salutary virtue be applied to the remission of those sins which we daily commit—declaring himself constituted a priest for ever according to the order of Melchisedec, he offered up to God the Father his own body and blood under the species of bread and wine; and under the symbols of those same things he delivered (his own body and blood) to be received by his Apostles, whom he then constituted priests of the New Testament; and by those words, *Do this in commemoration of me*, he commanded them and their successors in the priesthood to offer (them); even as the Catholic Church has always understood and taught."[1]

A sacrifice is defined to be an offering of some visible object made to God by the performance of a sacred action on the part of a priest or publicly deputed minister, by which we confess the supreme lordship of God. A sacrifice, therefore, differs from an ordinary offering in that it is an act of public worship paid to God alone by a duly authorized minister, who,

[1] Trent, sess. xxii, c. 1.

by slaying the victim or in some way changing it, proclaims the supreme dominion of God over all things.

The sacrifice of the Eucharist is called the Mass, and it may be offered for all the ends for which the various sacrifices of the Old Law were instituted by God. It is the supreme act of worship which we pay to God, and under this respect it is called latreutic; it is eucharistic, inasmuch as through it we render thanks to God for his graces and benefits; it is impetratory, inasmuch as it placates the anger of God, which has been roused against sin and the sinner; and it satisfies the justice of God and thus remits the punishment due to sin.

The introductory portion, up to the offertory, is called the Mass of Catechumens, the principal parts of the Mass being the offertory, the consecration, and the communion. There is much difference of opinion among divines as to what constitutes the essence of the sacrifice of the Mass. Some place its essence in the communion, others in the consecration, others in the consecration together with the communion. More probably the consecration of both species, by which the death of Christ is mystically represented by the separate consecration of the bread and wine, contains the whole essence of the sacrifice. The question belongs rather to dogmatic than to moral theology.

2. The Mass is a representation and a reproduction in an unbloody manner of the sacrifice of our Lord on the Cross. The principal minister, Jesus Christ, is the same; the victim is the same; the only difference is the manner of offering, as the Council of Trent teaches. A rightly ordained priest is the secondary minister, who in the name of Christ and of the Church offers the sacrifice to God. In so far as it is the action of Christ, the Mass produces its effect like the sacraments *ex opere operato*, and does not depend for its efficacy on the holiness or other dispositions of the priest. But it is also the action of the priest, and of the faithful in whose name he acts; and under this respect it produces its effect *ex opere operantis*.

All the faithful, by virtue of the Communion of saints, but especially those who assist at Mass, partake of its fruits and benefits. Those fruits are, as we have seen, latreutic, eucharistic, impetratory, propitiatory, and satisfactory; so that in the Mass we have a most excellent means of fulfilling all the ends of religion. By it and through it we offer to God the highest act of worship which it is in our power to offer; we give him thanks for his continual benefits to us, we ask in the most efficacious manner for what we and others stand in need of,

we propitiate his just anger, and make satisfaction for our sins.

The priest who celebrates performs an action in the highest degree pleasing to Almighty God and meritorious for himself. Moreover, just as prayer may be offered for a special intention, and as the sacrifices of the Old Law were offered for the needs of those who presented the victim, so the Mass also may be celebrated by the priest for some definite intention. The special or ministerial fruit of the Mass is thus applied by the priest according to the intention with which he offers it.

3. Apart from special prohibitions, the Mass may be offered for all those for whom the sacrifice of the Cross was offered, and whom it can benefit. It may be offered for all the faithful living and dead. The Council of Trent defined that the souls in purgatory are helped by the sacrifices of the faithful, and it is at least theologically certain that the fruits of the Mass are to some extent, which is known to God, applied to them *ex opere operato*, when Mass is said for that intention. It may also be offered for the conversion of infidels, and in thanksgiving for all the graces and glory which God has bestowed on the blessed in heaven. The damned in hell can receive no benefit from our prayers or sacrifices. According to the new Code, Mass may be offered for anybody, living or dead, but only privately, and with precautions to avoid scandal for excommunicates, and, moreover, only for their conversion, if they are to be avoided as excommunicates (Can. 809; 2262, sec. 2, ii).

4. Infinite is the worth and dignity of the sacrifice of the Mass, for it is the same as the sacrifice on Calvary, which was capable of redeeming innumerable worlds. This is acknowledged by all theologians, but they are not agreed as to whether the actual fruit derived from a Mass is also infinite. Those fruits are, indeed, greater or less in proportion to the dispositions of the person to whom they are applied. But while St Alphonsus and others are of opinion that a Mass offered for any number of intentions will benefit each one as much as if it were offered for him alone, others hold that the fruit of a Mass is determinate in quantity, and that if it is offered for many each one receives less than he would do if it were offered for him alone. The latter seems the preferable opinion, as it explains better the practice of the Church according to which Mass is offered for individuals, living and dead. If the first opinion were correct, charity would require that every Mass should be offered for all who are in need, for no individual would be the loser; everyone would derive all the benefit from

the Mass of which he was capable. This opinion, too, is more in keeping with the nature of the sacraments, of which the fruits seem to be limited in quantity. Otherwise there would be no use in administering several sacraments to a dying person when out of his senses, as is the practice of the Church. Whichever opinion be true, it is against justice to offer only one Mass in satisfaction of the obligation of saying several, when several stipends have been received. Alexander VII condemned the following proposition: "It is not against justice to receive stipends for many Masses and to say only one. Neither is it against fidelity, even if I promise on oath to him who gives a stipend that I will not offer the Mass for anyone else."

Nothing, however, prevents the priest from having a second intention, as it is called, even when he says Mass for a stipend. By this second intention the priest intends that if for any reason the Mass cannot benefit him for whom the first intention offers it, then the fruit may go to the second. Or, if in fact it be true that the fruit of a Mass is infinite, and capable of equally benefiting any number of persons, then the priest by his second intention desires that others should benefit by his Mass.

CHAPTER II

THE APPLICATION OF MASS

1. THE application of a Mass is the intention with which the priest who says it wishes that it should accrue to the benefit of a certain person or persons. Such a special act is only required for the application of the ministerial or special fruit, as it is called; for the priest himself derives fruit from his Mass, as likewise do those who assist at it, and the faithful in general, without any special application.

As it belongs to one who prays to choose the intention for which he offers up his prayer, so the application of his Mass belongs to the priest. A superior may indeed prescribe the intention for which a Mass is to be offered, but he who celebrates the Mass must make the actual application. This should be done before the consecration is finished, for, according to the *common opinion*, the essence of the Mass consists in the consecration, and an action cannot receive its direction from an intention which is only formed after the action is accomplished. Probably, however, it will be sufficient if the intention is formed between the two consecrations.

2. It is not necessary that the intention by which Mass is applied should be actual or even virtual; it is sufficient if it be habitual, or made once for all and not afterward revoked.

When Mass is said for a stipend it is not necessary for the priest to know precisely what the intention is for which he is desired to say Mass; it is sufficient if he say Mass for the intention of the giver of the stipend. Clement VIII forbade priests to offer Mass for the first who should give a stipend for that purpose, and if no one actually intended to ask for a Mass when a priest celebrated with such an intention the Mass would not be applied.

A priest does not sin if he celebrates without any special intention, but it is always better to have one, as then the Mass will be more fruitful. When a priest celebrates for a stipend he may not divide the fruits of the Mass, applying the satisfactory or other fruit to the intention of the giver, and another

fruit to some other intention. The whole fruit of the sacrifice must go to the giver of the stipend. When, however, a Mass is ordered by a superior in thanksgiving for some blessing, it will not be wrong to apply the other fruits for other intentions which in no way interfere with that prescribed by authority.

CHAPTER III

THE OBLIGATION OF APPLYING MASS

1. PRIESTS may be bound to say Mass for a definite intention on various grounds. Those who hold a benefice are frequently obliged to say Mass, either every day or on certain fixed days, for the intentions prescribed by the founder of the benefice. The conventual Mass, which should be said every day in cathedral, collegiate, and conventual churches, ought to be applied for the benefit of the souls of benefactors.

The Council of Trent[1] declares that by divine precept it is enjoined on all who have the cure of souls to offer sacrifice for their flock. Bishops, therefore, and regular prelates, who have the full cure of souls, are bound by divine law to say Mass for those committed to their charge. Parish priests are of ecclesiastical institution, and they have not the full cure of souls committed to them. How far their duties extend depends on ecclesiastical law. That law obliges them as well as bishops to say Mass for their flock every Sunday and holy day of obligation, even on those feast-days of obligation which have been suppressed. This obligation is at the same time real and personal. It is real in the sense that if for any reason a bishop or parish priest cannot fulfil it on any particular day, he is under the obligation of providing that it should be fulfilled by some other priest. It is personal in the sense that they must as far as possible fulfil it in person; but if a parish priest be lawfully absent from his parish, he may either apply Mass for his people in the place where he is, or have one applied in his parish by the priest who takes his place (Can. 466, sec. 5).

Quasi-parish priests are bound to offer Mass for their people on the more solemn feasts mentioned in Canon 306.

2. The ecclesiastical superiors of priests may issue a command that Mass be applied for some special intention. When this is done the command must, of course, be obeyed by all whom it concerns. The matter of such a precept is certainly grave, and so there will be a serious obligation of complying with it, if the superior intended to issue a strict precept. This, however, is not always or necessarily the case; and in particular

[1] Sess. xxiii, c. 1, de Ref.

instances, if there is question of determining the gravity of an obligation arising from such a precept, the intention of the superior who gave it will have to be examined according to the ordinary rules of interpretation.

3. A priest may bind himself by promise to say Mass for a particular intention, and then he will be bound to say it either in justice, or at least out of fidelity, just as he is bound to fulfil his other promises.

4. Finally, priests are bound in justice to say Mass for the intention of those from whom they have received a stipend for the purpose. The stipend is not the price of the Mass, for this cannot be bought and sold without committing the grave sin of simony. The stipend is given to provide for the support of the priest, who in return undertakes to say Mass for the giver of the stipend. In the early Church the faithful used to bring bread and wine to the priests, who selected from what was offered enough for the sacrifice, and reserved the rest for their support. This was found to be inconvenient, and in course of time the faithful who wished Mass to be offered for their intention contributed a sum of money for the support of the priest. This method, after all, is in substance what St Paul alludes to: " Know you not that they who work in the holy place eat the things that are of the holy place; and theyt hat serve the altar partake with the altar ?"[1] Simony may, indeed, be committed in transactions concerned with the Mass and stipends, but such sordid practices should not be presumed to be of ordinary occurrence (Can. 824).

Although a priest who accepts a stipend for a Mass does not sell the Mass, yet he enters into a strict contract with the giver of the stipend, and binds himself in justice to apply the Mass for his intention. He will, therefore, commit a grave sin against justice if he fail to fulfil his obligation, and he must restore the stipend which he received, but which he has no title to keep. Not only is the priest who has accepted a stipend bound in justice to say a Mass, but justice also requires that he should observe all the conditions of the contract into which he entered concerning the quality of the Mass, the place, and the time of celebration.

The law of the Church on the matter may be stated as follows:

According to the received and approved custom and practice of the Church, it is lawful for any priest who says and applies Mass to receive an alms or stipend for it.

[1] 1 Cor. ix. 13.

But whenever a priest says Mass more than once in the day, if he has applied one Mass by a title of justice, except on Christmas Day, he cannot receive a stipend for another Mass on the same day, but he may receive some compensation due for some extrinsic reason.

It is never allowed to apply Mass for the intention of someone who will offer a stipend and ask for the application of a Mass but has not yet done so, and retain a stipend given afterwards for a Mass said beforehand.

Nor is it allowed to receive a stipend for a Mass which is due in justice and applied by another title. Nor to receive a double stipend for the application of the same Mass. Nor to receive one stipend for the mere celebration of Mass, and another for the application of the same Mass, unless it is certain that one stipend was offered for the mere celebration of the Mass without its application.

Those are called *manual* stipends which are offered for Masses by the faithful, as it were, out of *hand*, whether in order to satisfy their own devotion or to fulfil an obligation imposed on them by the will of a testator even in perpetuity.

The stipends of funded Masses are said to be *like manual* Masses which cannot be applied in the proper place, or by those who ought to apply them according to the laws of the foundation to which they belong, and so by law or by an indult of the Holy See they have to be given to other priests to be satisfied.

Other stipends which are received from the revenue of foundations are called *funded* or *foundation* Masses.

Let all appearance even of trading or trafficking with stipends for Mass be altogether avoided.

As many Masses must be said and applied as stipends were given and accepted, however small they were.

The obligation does not cease even though the stipends already received for Mass have been lost without any fault on the part of him who was burdened with their celebration.

If anyone offers a sum of money for Mass stipends without indicating the number of Masses which he wishes to be said, let the number be computed according to the tax of the place where he lived, unless it must be lawfully presumed that his intention was different.

It belongs to the local Ordinary to determine the manual stipend for Masses in his diocese by a decree made in diocesan synod as far as possible; nor is it lawful for a priest to exact a larger sum.

Where there is no formal decree of the Ordinary on the point, let the custom of the diocese be observed.

Religious, even though they be exempt, ought to abide by the local Ordinary's decree or the custom of the diocese in the matter of the manual stipend of Masses.

A priest may receive a larger stipend for the application of Mass if it is offered voluntarily, and also a less, unless the local Ordinary has forbidden it.

It is presumed that the offerer of a stipend asked only for the application of Mass, but if he expressly stipulated that any circumstances should be observed in the celebration of Mass, the priest who accepts the stipend should comply with the desire expressed.

If the time for the celebration of Masses was expressly determined by the offerer of the stipend, the Masses must by all means be celebrated at that time.

If the offerer expressly determined no time for the celebration of manual Masses—

(1) Masses offered for an urgent intention must be offered at the time required by the circumstances and as soon as possible.

(2) In other cases the Masses must be offered within a reasonable time in proportion to the greater or less number of Masses. The decree of the Sacred Congregation of the Council, May 11, 1904, assigned one month from the time of receiving the stipend as the limit within which one Mass is to be said, six months as the limit for one hundred Masses, and a longer or shorter period for a greater or less number.

If the offerer expressly left the time of celebration to the judgement of the priest, the priest may say the Mass at what time he pleases, but no one is allowed to receive more stipends than he can satisfy in one year.

In churches in which, on account of the special devotion of the faithful, stipends for Mass are so abundant that all cannot be said there within the proper time, let the faithful be informed by a notice placed in an open and conspicuous place that the stipends offered will be satisfied either there, when it can be done conveniently, or elsewhere.

Let one who has Masses to be said by others distribute them as soon as may be, but the lawful time for their celebrating begins from the day on which the priest who has to say them received the same, unless the contrary is certain.

Those who have a number of Masses of which they can freely dispose may give them to priests on whom they can rely, provided that they know that they are unexceptionable, or are recommended by the testimony of their own Ordinary.

Those who have given Masses, which they have received from the faithful or which are entrusted to them, to others to be said by them, remain bound by their obligation until they receive notice that the stipends have been received and the obligation accepted.

One who sends manual stipends to others ought to send the whole sum which he has received, unless either the offerer expressly allows him to retain a portion, or it is certain that the excess above the diocesan tax was given out of personal considerations.

In Masses which are *like* manual Masses, unless the intention of the founder forbids it, any excess may lawfully be retained, and it is sufficient to send only the manual stipend of the diocese in which the Mass is celebrated, if the large stipend takes the place of a part of the dowry of the benefice or pious foundation.

Each and all administrators of pious foundations or persons who are bound in any way to fulfil obligations of having Mass said, whether ecclesiastics or laymen, towards the end of each year must give the Masses which have not yet been said to their Ordinaries according to the method to be defined by them.

This period is to be interpreted in such a way that in the Masses *like* manual Masses the obligation of handing them over runs from the end of the year within which they ought to have been said; but in manual Masses after a year from the day of undertaking them, unless the offerer determined otherwise.

The right and the duty of seeing that Mass obligations be fulfilled belongs to the local Ordinary in secular churches; in the churches of religious it belongs to their superiors.

Let rectors of churches and of other pious foundations, whether secular or religious, in which Mass stipends are wont to be received, have a special book in which they note the number of stipends for Mass received, the intention, the amount of the stipend, and the celebration of the Masses.

The Ordinaries are under the obligation at least every year of examining these books in person or by deputy.

Moreover, local Ordinaries and religious superiors who give Masses to their subjects or to others to be said should at once put down in order in a book the Masses which they have received with their stipends, and should take care, as far as they can, that the Masses be said as soon as possible.

Indeed, all priests, whether secular or religious, ought to note accurately what Mass intentions they have received and which they have satisfied (Can. 824-844).

CHAPTER IV

THE TIME FOR SAYING MASS

1. By the common law of the Church Mass may only be said once in the day except on Christmas Day and on the day of the Commemoration of the Holy Souls (November 2), when a priest may say three Masses. Mass may be said on every day in the year, but on the three last days in Holy Week Low Mass is forbidden. On those days in cathedral, collegiate, and parish churches, High Mass should be sung as far as possible. In parish churches where High Mass cannot be sung, but three or four clerics can be got to serve, the ceremonies should be carried out according to the memorial of rites drawn up by command of Benedict XIII. In parish churches where not even this can be done, the bishop may give leave for a Low Mass on Holy Thursday, and he may also, for the convenience of the sick, allow a Low Mass to be said in other churches before the High Mass.

2. Mass may be said twice by a priest on the same day if the necessity of the people requires it. The bishop is the judge as to when it is necessary, as it will be if the people cannot all get to one Mass on account of the distance at which they live from the church, or because the church is too small to contain them all at once. Moreover, in missionary countries it is quite common for priests to have a special faculty of celebrating twice in the day on Sundays and holy days of obligation. The only cause recognized for the lawful use of this faculty is the necessity of the people, of which again the bishop is the judge, and it is expressly forbidden to take a stipend for the second Mass. The use of the faculty is not lawful when another priest can be got to say the Mass required by the necessity of the people.

3. According to the present discipline of the Church, Mass may not be begun before one hour before daybreak nor after one hour after midday (Can. 821, sec. 1). The necessity of the people or of the priest is a sufficient reason for celebrating somewhat earlier and later than the ordinary times, and regulars have privileges by which they may for just cause begin Mass much earlier and much later than the legal time.

His Holiness Pius X, by a decree of the Holy Office dated August 1, 1907, graciously permitted a priest in future to say three Masses or only one according to the rubrics on the night of the Nativity in all convents of nuns who have enclosure, and in other religious institutions, pious houses, and clerical seminaries, in which the Blessed Sacrament is habitually reserved. Holy Communion may be administered to all who ask for it at these Masses, and anyone who hears one or more of them satisfies the precept of hearing Mass on that day.[1]

[1] *Acta Sanctae Sedis*, xl, p. 478; Can. 821, sec. 3.

CHAPTER V

WHERE MASS MAY BE SAID

1. By ecclesiastical law Mass may regularly be said only in churches and oratories dedicated solely to the service of God, and therein on duly consecrated altars.[1] If, however, there be no church in the place, or if it be in ruins, or if it be too small to hold the number of worshippers, Mass may be said in a tent or in the open air on a portable altar with the leave of the bishop, if time permits of this being asked.

A bishop can erect public oratories in which Mass may be said in religious institutions, in monasteries and convents, in seminaries, hospitals, prisons, and in the bishop's own residence. bishops also enjoy a personal privilege of saying Mass on a portable altar even in private houses where they happen to be staying.

The Council of Trent[2] forbade bishops to allow priests to say Mass in private houses, and in consequence of this law and of repeated answers of the Roman Congregations, it is now settled that bishops have no power to grant leave for purely domestic oratories in private houses (Can. 822).

The power to do this is now reserved to the Holy See.

If there is an oratory duly erected on board ship, Mass may be said there when circumstances permit. The Holy See also grants leave for Mass to be said on board ship on a portable altar even when there is no permanently erected oratory on board. A priest who has obtained and desires to use this privilege is bound to observe the conditions under which it is granted. Those conditions are that the ship is safe and at a distance from shore, that the sea is tranquil, and that another priest or a deacon is at hand to hold the chalice in case of danger when the ship rolls. Mass should not be said in the passengers' berths unless everything has been arranged so as to show due reverence to the Blessed Sacrament.

2. If a church or public oratory has been polluted by the perpetration therein of certain crimes, it is forbidden to say Mass there until it has been reconciled. The crimes which

[1] Trent, sess. xxii, Decree on things to be observed in Mass.
[2] *Loc. cit.*

pollute a church, provided that they are certain, notorious and committed in the church itself, are: homicide, the grave and injurious shedding of blood, the putting of the church to impious or sordid uses, the burial therein of an unbaptized person or of an excommunicated person after a declaratory or condemnatory sentence (Can. 1172).

It is not allowed to celebrate the divine offices, to administer the sacraments, or to bury the dead in a polluted church before it has been reconciled.

If the church is only blessed it can be reconciled by its rector or by any priest with the presumed leave at least of the rector.

If the church is consecrated, its reconciliation belongs to the Ordinary of the place or to the higher superior if it is a church of exempt religious, or to a priest delegated by either of them. But in a case of grave and urgent necessity, the rector of a consecrated church can reconcile it and inform his Ordinary afterwards. The reconciliation of a blessed church can be done with common holy water. If the church is consecrated, the water should be specially blessed, but the priest who is deputed to reconcile the church can bless the water as well as the Ordinary (Can. 1176, 1177).

Private oratories are not polluted, even if any of the above crimes be committed in them, and so they do not need reconciliation.

Mass may not be said in a church or oratory which has lost its consecration. This happens when the greater part of it is destroyed at one and the same time, or when a new portion is added to it and what is added is greater than the old part. A church does not lose its consecration if the roof falls in or if the plastering of the walls is renewed. When a church loses its consecration it must be reconsecrated, or at least blessed, before Mass be again said in it.

When a church is polluted the altars in it are also polluted, but altars do not lose their consecration merely because the churches in which they are placed are desecrated. A fixed altar loses its consecration if the altar-stone is loosed from its foundation, and both fixed and portable altars lose their consecration if the tomb where the relics are placed is violated, or in consequence of a large fracture.

3. The sacred vessels and vestments lose their consecration when they are broken or torn so as to lose their shape, or when they are put to improper uses or exposed for public sale (Can. 1305). When the sacred vessels or vestments have lost their consecration, they must be mended and be reconsecrated before use.

CHAPTER VI

REQUISITES FOR SAYING MASS

BESIDES what we have seen in the last chapter, the Missal prescribes various other requisites for the due celebration of Mass. The following especially call for mention here: three altar-cloths, two wax candles, the ordinary priestly vestments, a server, a chalice and paten, clean corporal and purificator of linen, and a Missal. The altar linen and the vestments should be blessed by a bishop or by a priest with specially delegated faculties for the purpose.

The chalice and paten should be of silver, and gilded at least on the inside. They should also be consecrated by a bishop. The difficulty of procuring wholly wax candles was reported to the S.R.C., which answered, December 14, 1904, that bishops should as far as possible see that the two candles for Mass should at least have a greater proportion of beeswax than of other material, and that private priests need not anxiously inquire about the quality of the wax.

Of the vestments, at least the alb, chasuble, stole, and maniple are required under grave precept; the amice and the girdle, as also a pall, purificator, and crucifix, are required under a less serious obligation.

The server should be a Catholic and of the male sex, but if one cannot be procured, a woman may make responses from outside the altar rails (Can. 813).

It is a disputed point among theologians whether the proper colour of the sacred vestments is of strict precept; and they deny that there is a strict precept with regard to the use of a veil for the chalice, a burse, and a stand for the Missal.

CHAPTER VII

THE RUBRICS OF THE MISSAL

1. In the rubrics of the Missal the Church has laid down a series of minute rules for the celebration of Mass. Their number and minuteness show her solicitude concerning the proper performance of this divine sacrifice. Those which have reference to the Mass itself are in general preceptive and bind under pain of sin. Grave sin, then, is committed by violating the rubrics of the Mass in serious matters; venial sin is committed by their violation in smaller matters. If a notable or important portion of the rite is omitted, or if notable additions are made to it by private authority, or any considerable change be made in it, there is a serious violation of the law. The rubrics which ordain that certain portions of the Mass be said in a loud or low or middle tone of voice only bind under venial sin, and so, if their observance would cause annoyance to other priests who are saying Mass, they cease to bind. Similarly, if through infirmity a priest is unable to observe some smaller rubrics, it is not the mind of the Church that he should be obliged to abstain from celebrating the holy mysteries.

It is a probable opinion that those rubrics in the Missal which have reference to what should be done out of Mass are only directive, not strictly preceptive so as to bind under pain of sin.

2. The general rule is that the Mass must agree with the office which the calendar prescribes to be said. However, by the decree S.R.C., December 7, 1895, when Mass is said in a church or public oratory which is not one's own, which uses a different calendar, and celebrates a feast of double or higher rite, the Mass must always agree with the calendar of the church or public oratory, and not with the office of the celebrant.

3. When Mass has been once begun it may not be broken off without grave reason, even before the consecration. After the consecration a still graver cause is required, as, for example, the sudden breaking out of fire in the church, when the sacred species might be at once consumed and the Mass brought to

an end. Moreover, even temporary interruptions of Mass are forbidden except after the Gospel, according to custom. The prohibition is stricter according to the greater solemnity of the part of the Mass where there is question of interruption. However, for good cause, an interruption may be permitted before the offertory; to justify an interruption between the offertory and the consecration a graver cause is required, and a very grave cause after the consecration.

BOOK VI

THE SACRAMENT OF PENANCE

CHAPTER I

THE NATURE OF PENANCE

1. PENANCE is both a virtue and a sacrament of the New Law. For as the Council of Trent teaches: "Penitence was indeed at all times necessary in order to attain to grace and justice for all men who had defiled themselves by any mortal sin, even for those who begged to be washed by the sacrament of Baptism: that so, their perverseness renounced and amended, they might with a hatred of sin and a godly sorrow of mind detest so great an offence of God. Wherefore the prophet says, 'Be converted and do penance for all your iniquities, and iniquity shall not be your ruin.' The Lord also said, 'Except you do penance, you shall all likewise perish'; and Peter, the prince of the Apostles, recommending penitence to sinners who were about to be initiated by Baptism, said, 'Do penance and be baptized every one of you.'"[1] God, therefore, has always required repentance or penance on the part of the sinner as a necessary condition for forgiveness. The virtue of penance may be defined as a habit inclining the sinner to hatred and detestation of his sin. He may be moved to this hatred and detestation by various motives, as, for example, by the thought of the goodness of God, who deserves better treatment than to be offended by the sinner, by the feeling of gratitude toward God for his benefits and mercies, by the sentiment of justice which induces the sinner to make reparation for the wrong which by sin he has inflicted on the majesty of God. Penance may thus be a general virtue with various motives, but theologians agree that it is also a special virtue with a particular motive of its own. More commonly they assign as this motive the hatred of sin as being an offence against God, something at which God is rightly and justly angered and displeased, and for which satisfaction must be made to God before peace and harmony can be again established between him and the sinner.

[1] Sess. xiv, c. 1.

Our Lord Jesus Christ instituted the sacrament of Penance, by which the sins committed after Baptism might be forgiven on the sinner's repentance. As the Council of Trent teaches: "Nevertheless, neither before the coming of Christ was penitence a sacrament, nor is it such since his coming for anyone previously to Baptism. But the Lord then principally instituted the sacrament of Penance when being raised from the dead he breathed upon his disciples, saying, 'Receive ye the Holy Ghost: whose sins you shall forgive they are forgiven, and whose sins you shall retain they are retained.' By which action so signal, and words so clear, the consent of all the Fathers has ever understood that the power of forgiving and retaining sins was communicated to the Apostles and their lawful successors for the reconciling of the faithful who have fallen after Baptism."[1]

Penance may be defined as a sacrament of the New Law instituted by Christ after the manner of a judicial process for the remission of sins committed after Baptism by a priest's absolution given to the contrite sinner who has confessed his sin to him.

This sacrament is instituted after the manner of a judicial process, which may be gathered from the very words of institution: "Whose sins you shall forgive they are forgiven, and whose sins you shall retain they are retained," said our blessed Lord; not, of course, that the Apostles were empowered to forgive or not to forgive sins according to their own pleasure. They were bound to exercise the power entrusted to them according to the intention of him who had given it, so that as faithful dispensers of the mysteries of God they were to forgive the sins of those who were worthy of forgiveness, and to dismiss without forgiveness those who were unworthy. But how could they know who was worthy and who was unworthy, and what sins they could forgive and what they could not? Evidently only by the sinner acknowledging his sins and showing that he repented of them, or on the contrary by his showing the want of the necessary dispositions. And so we gather from the words of institution of this sacrament what the tradition of the Church teaches, that for the forgiveness of sin in the sacrament of Penance the sinner must in sorrow confess his sin, and then it will be forgiven by the absolution of the priest. In this we have the substance of a judicial process, inasmuch as the sinner is the criminal who is witness against himself, and the priest is the judge who, according to the merits of the case, absolves the sinner and remits the sin

[1] Sess. xiv, c. 1.

in the name of God, or by not absolving the unworthy sinner retains his sin and condemns him to go unpardoned.

2. The effects of a fruitful reception of this sacrament are the forgiveness of all mortal sins and of all venial sins which are confessed with due sorrow, the consequent remission of the eternal punishment due to mortal sin, and a partial remission according to the dispositions of the penitent of the temporal punishment which his sins have deserved.

Sins which are confessed to a priest who has the requisite jurisdiction to absolve them are forgiven directly by virtue of the power of the keys. On the other hand, if without fault on the part of the penitent some sin is not confessed and the penitent has the requisite sorrow, the sin will be forgiven indirectly, inasmuch as the absolution will take its effect and infuse sanctifying grace into the soul, and this sanctifying grace expels all grievous sin from the soul. The absolution will also be indirect when the priest has not faculties for some sin or sins confessed, but for some special reason he is justified in giving the penitent absolution.

3. The Council of Trent[1] teaches that " This sacrament of Penance is for those who have fallen after Baptism necessary unto salvation, as Baptism itself is for those who have not as yet been regenerated." This sacrament, then, like Baptism, is a necessary means for salvation for all who have committed grave sin after Baptism. There is, consequently, for all such a divine precept which obliges them to go to confession. They must fulfil this precept at any rate before death, and the Church, using the power given her by her divine Founder, has obliged all who are conscious of being in mortal sin to go to confession at least once a year (Can. 906). If there is no opportunity of going to confession, one who has fallen into grievous sin can through the mercy of God obtain pardon for it by making an act of perfect contrition or of pure love of God. These acts implicitly contain a desire to receive the sacrament of Penance and to fulfil all other obligations imposed by God and by lawful authority. Even after sin has been forgiven by an act of perfect contrition or of pure love of God, there will always remain the obligation of confessing it, if it be mortal, when the time for the annual confession arrives or the opportunity occurs. Those who do not fall into grievous sin are under no obligation of going to confession, though, of course, they are the last to neglect the use of so powerful a means as frequent confession to attain purity of soul and to obtain great graces from God.

[1] Sess. xiv, c. 2.

CHAPTER II

THE MATTER OF PENANCE

1. THE remote matter of the sacrament of Penance is the sins which have been committed after Baptism, for sins committed before Baptism, when this is received in adult age, are forgiven by Baptism. The matter of Penance is necessary, or free but sufficient. Mortal sins which have never been directly absolved are the necessary matter of confession, for as the Council of Trent teaches,[1] every mortal sin committed after Baptism must be submitted to the keys. The same council teaches that venial sins may be confessed, but that there is no necessity to do so, and so they are sufficient but free or optional matter of the sacrament. The same is true also of mortal sins which have been already absolved directly, for the penitent may with fruit renew his sorrow for them, and nothing prevents the sentence of absolution being repeatedly pronounced over them. The previous sentence of absolution is, as it were, confirmed anew, and thereby fresh grace is infused into the soul (Can. 901, 902).

2. A doubt may sometimes arise as to whether a person has ever been baptized, or as to whether his Baptism was valid, and after Baptism has been conditionally administered in such a case so as to make so important a matter secure the question remains whether this person must make a general confession of past sins or not. If a Catholic has been in the habit of going to confession and making good ones as far as he knows, there will be no necessity to repeat those confessions after conditional Baptism. For if he was baptized before, his confessions would be valid, and if he was not baptized, his past sins are not matter for confession.

A non-Catholic, however, who receives conditional Baptism is in a different position. His past sins have not been confessed; if he was baptized before, he is bound to confess them; if he was not baptized before, they are not matter for the sacrament of Penance. What is he bound to do when the fact of Baptism is uncertain, and at most it can be said that there are probabilities on either side?

[1] Sess. xiv, c. 5.

The First Synod of Westminster[1] prescribes that a non-Catholic already probably baptized who is received into the Catholic Church must, after conditional Baptism, make a full confession of the sins of his past life. This decree was confirmed by the Holy Office, December 17, 1868, and several other decrees and instructions in the same sense have been issued. In practice, then, and in countries which are bound by these decrees and instructions, as are England and the United States, the question is settled by positive law. With regard to other countries which are not directly subject to the foregoing decrees and instructions, it is still a matter of controversy among divines whether a full confession is obligatory. In the opinion of several, there is no universal law, divine or human, which makes confession obligatory in such a case.[2]

3. The proximate matter of Penance, according to the more common opinion, is the acts of the penitent: contrition, confession, and satisfaction. According to the Thomist doctrine, the acts of the penitent constitute the material part of the sacrament, so that they are the matter out of which the sacrament is made, and are an essential part of the sacramental sign. If the Council of Trent calls them the quasi-matter,[3] it is not because they are not the true matter in the sense just explained, but because they are not the matter which is used externally in the confection of the sacrament, as is water in Baptism, or chrism in Confirmation.

On the other hand, the Scotists allow, indeed, that contrition, confession, and satisfaction on the part of the penitent are necessary conditions for the administration of Penance, but they hold that the whole sacramental sign is contained in the words of absolution. These words alone are used by the minister of the sacrament, and they signify the grace conferred by the sacrament. Taken materially, they constitute its matter; inasmuch as they signify the giving of grace for the remission of sins, they constitute its form. This opinion has never been condemned by the Church, and it remains probable, but the question belongs rather to dogmatic than to moral theology.

4. It is not sufficient to confess one's sins in general terms, and if they are grievous the law of God requires that they be confessed according to number and species, as the Council of Trent teaches.[4] As we have seen, venial sins are sufficient matter for absolution, but there is no necessity to confess them. But supposing that a penitent has only venial sins, and he

[1] D. xvi, n. 8.
[2] Ferreres, *Comp. Theol. Mor.*, ii, n. 527.
[3] Sess. xiv, c. 3.
[4] Sess. xiv, c. 5.

wishes to confess them, what kind of confession is necessary and sufficient? Will it be enough to say, "I accuse myself of some small sins and ask for absolution"; or "I accuse myself of all the sins of my past life, and I have nothing serious"?

All divines agree that it will be sufficient to mention some one sin in particular in this case, or to mention the virtue or obligation which has been violated, as by saying, "I accuse myself of slight negligence in prayer," or "of small faults against charity." They differ about the lawfulness of using a mere general formula. Such a method of confessing is against the practice of the Church, which, as St Thomas says, we should always follow; it is also liable to abuse, for penitents cannot always decide what is serious and necessary matter for confession or not, and shame might easily lead them to be content with generalities when they should give particulars. However, there is something to be said for the other view, inasmuch as some sort of confession is all that is required for the essence of the sacrament, and when there are only venial sins to be confessed there is no certain law which prescribes confession according to number and species, or even more than in general terms. This opinion is at any rate sometimes of use, as it may at times enable confessors to be satisfied with generalities when they cannot get more.

5. The solution of questions about the obligation of confessing doubtful sins largely depends on what system of moral theology is followed. The following principles are generally approved by probabilists:

(*a*) When the penitent doubts whether he has been guilty of some sinful act or not, he is not bound to confess it, for he cannot be said to be conscious of sin, and a certain obligation cannot arise from an uncertain source.

(*b*) When the doubt is as to whether full consent was given to what would have been a grave sin if that were the case, the question should be settled by recourse to presumptions. If in other cases consent has usually been given, the presumption is against the penitent, and he should confess the sin as it is in his conscience; otherwise there will be no obligation to do so.

(*c*) If the doubt is whether the sin were mortal or venial, there is no obligation to confess it, for the penitent is not conscious of mortal sin; and only such are bound to confess.

(*d*) If the doubt is whether a mortal sin which was certainly committed has ever been confessed, we must distinguish; if there be no good ground for thinking that it has been confessed,

the obligation will still remain; if, on the contrary, there be good ground for thinking that the sin has been confessed, there will be no obligation of confessing it again.

(*e*) It is generally better for penitents, unless they are scrupulous, to confess doubtful sins, as it conduces to peace of conscience, and is a meritorious act of humility.

When a doubtful sin has once been confessed as such there will be no obligation to confess it again, even though subsequently the penitent becomes sure that he committed the sin. The sin was confessed as it was on the penitent's conscience, and it was absolved directly.

According to the common opinion, although there is no strict obligation to confess a mortal sin which is doubtful, or which has probably been confessed, yet one should not go to Holy Communion in such a state of doubt without either going to confession and confessing at least some sin, or making an act of contrition. For a man should prove himself before receiving Holy Communion, and have a well-grounded belief that he is in a state of grace.

If a penitent mentions only doubtful matter for absolution, the confessor should secure certain matter before giving absolution. Although a penitent may confess only optional matter, yet he has a right to absolution founded on the tacit contract which the confessor entered into with him when he admitted him to confession.

CHAPTER III

CONTRITION

CONTRITION is the first of the acts of the penitent which constitute the matter of the sacrament of Penance. It is defined by the Council of Trent to be a heartfelt sorrow and detestation of sin committed, with a purpose of not sinning again. In this section we will treat of contrition apart from the purpose of amendment, and in the following section, of the purpose of amendment.

SECTION I

The Nature of Contrition

1. A heartfelt sorrow is not quite the same thing as a hatred or detestation of sin. Sorrow is a pain which we feel on account of the presence of some evil or the absence of some good; hatred is an aversion for some evil which is past. Hatred of sin, consequent aversion for it, and a turning away from it is the chief element in contrition; for if we have this hatred we shall have sorrow for sin regarded as a present evil, we shall turn away from it as a past evil, and we shall propose to flee from it in the future. If, then, we have this hatred of sin, we shall have sorrow and a purpose of amendment; we shall have true contrition.

That sorrow for sin which arises from the perfect love of God is called contrition in the full and strict sense; sorrow for sin arising from less perfect motives, as from the fear of hell or the moral turpitude of vice, is called attrition. Ordinarily the word contrition is used indifferently of both kinds of sorrow.

2. Contrition or penitence or repentance is, as we have already seen, according to the teaching of the Council of Trent, a necessary condition for the forgiveness of sin by God. God will not forgive sin unless the sinner turn from his sin and approach him by sorrow of heart. Contrition, then, is a necessary means of salvation for all who have fallen into grievous sin. It is also matter of divine precept which must be fulfilled at least when the sinner is in danger of death, for then it becomes of supreme necessity, and also sometimes during life. The

Church has determined this divine precept by commanding all who have come to the use of reason and have fallen into sin to go to confession at least once a year. Moreover, repentance for sin becomes necessary when any action has to be performed which for its due performance requires the agent to be in the state of grace. Furthermore, inasmuch as one who is deprived by sin of the grace of God cannot long resist temptation and will fall again and again before long, the sinner is obliged to rise from his sin in order to avoid repeated falls. Of course it is better, and the sinner is to be urged, by all means, to rise at once when he has had the misfortune to fall into sin. He should never sleep while he is conscious of being out of the friendship of God. Still he is not bound under pain of committing a new sin to repent immediately after committing sin. It will be sufficient if he repent at least when repentance becomes necessary according to the doctrine which has just been laid down.

3. Not every sort of sorrow is sufficient to justify the sinner, even with the help of the sacrament of Penance. Although perfect love of God suffices to reconcile the sinner with God, though it leaves the obligation of confessing the sin it remits, still this love will not serve by itself as a preparation and disposition for the reception of Penance. A material part of the sacrament of Penance is contrition, and contrition is not love. The sinner, then, who wishes to receive the sacrament of Penance must have true and sincere sorrow for his sin; he must detest it and turn away from it in order to be reconciled with God, whom it offends. Mere natural sorrow for sin because of the temporal evils which it causes is not sufficient. I may well be sorry because sin has ruined my good name, or my health, or my fortunes, but such motives are merely natural, and have no relation to God. The sinner in the sacrament of Penance seeks reconciliation with God, and so the motives of his sorrow must have reference to God; they must be supernatural, founded on revelation and on faith. Without faith no act can be of avail for salvation, as "without faith it is impossible to please God."[1] The sinner must regard sin as the greatest of all evils, as in reality it is. He must be prepared to do and to suffer anything rather than commit sin again. Otherwise he cannot be said to fulfil that greatest of all the commandments, which bids us love God with our whole heart, with our whole soul, with all our strength, and with all our mind. Inasmuch as any one mortal sin deprives us of the friendship

[1] Heb. xi 6.

of God, the sorrow of the sinner must also be universal and embrace all the sins by which he has grievously offended Almighty God. For this it is not necessary that there should be a separate and distinct act of sorrow for every sin committed; it will be sufficient if the motive be universal, so as to embrace all sins. Thus, inasmuch as all mortal sins are directly opposed to charity, and any such sin deserves the punishment of hell, if our sorrow is motived by love toward God, or by fear of hell, it will be universal in the sense required.

Provided that there be sorrow for all mortal sins confessed, a want of sorrow for venial sins will not invalidate the sacrament. For venial sins are compatible with the state of grace and the friendship of God. Still there must be some sorrow for sin confessed; otherwise an essential part of the sacrament of Penance will be wanting. And so if the penitent have only venial sins to confess, for none of which he is sorry, the sacrament would be invalid and sacrilegious. He must at least be sorry for one sin confessed, and he should not confess venial sins for which he is not sorry unless he has some good reason, as if he wishes to ask the advice of his confessor about them, or to make the state of his soul more fully known to him.

4. As contrition, according to the common view, forms a part of the sacramental sign in Penance, it should in some manner be expressed outwardly, not indeed that any form of words is necessary, but the sorrow of the penitent should appear from his confession, from his demeanour, or from his words or other signs. It must exist, if not before, at least when absolution is given, for sin cannot be forgiven if there be no sorrow for it. Moreover, as the different parts of the sacrament go to make one moral whole, the penitent's act of sorrow should in some way be referred to the sacrament. For this, however, it will be sufficient if together with the act of sorrow there be the intention to confess the sin. In case, then, a penitent has inadvertently omitted a serious sin from his confession, but remembers it immediately after he has received absolution and mentions it to the confessor, the latter may absolve him at once, nor is it necessary for the penitent to make a fresh act of sorrow for that particular sin.

On account of the necessity of a moral union between the several parts of the sacrament, there must not be too long an interval between the act of sorrow for sin and the reception of absolution for it. Ordinarily, of course, the sorrow is virtually renewed and expressed when the sin is confessed, but if this were not the case, and the act of sorrow preceded the confession

by more than one or two days, it would be doubtful whether there was the necessary union between the parts of the sacrament so as to constitute one sacramental sign.

5. There have been heated controversies in the past as to the sufficiency of attrition to remit sin with the sacrament of Penance. Although they are not quite settled even yet, nevertheless, since the Council of Trent the common doctrine is fairly clear and certain. The Council, then, seems to teach[1] that sorrow for sin because of the fear of hell, or its moral turpitude, or on account of the punishment with which God afflicts the sinner even in this life, will be sufficient for the remission of sin in the sacrament of Penance, provided that it destroys all affection for sin in the heart of the penitent and converts him from sin to God. The slavish fear of hell, by which a man refrains from sinful acts while preserving his affection for them, is, of course, insufficient even with the help of the sacrament to forgive sin and reconcile the sinner with God. The fear which is salutary and efficacious must be the filial fear by which the sinner turns to God because he neither wants sin nor its evil consequences any more. Such sorrow has all the elements which, as we saw above, are required in contrition.

6. There is a controversy among theologians as to whether the sacrament of Penance can ever be valid without producing its effects in the soul at the time of its reception on account of some obstacle which is there. We saw above that this may be the case with Baptism and other sacraments. There is a special difficulty with regard to Penance, because the dispositions, whose absence is only an obstacle to grace given by other sacraments, enter into the substance of Penance, and so their absence would seem to destroy the sacrament itself. In spite of this, however, it is a probable opinion that at any rate in two cases the sacrament of Penance may be valid but *unformed*, as theologians say. The first case is when a penitent has forgotten some mortal sin for which he has never elicited an act of sorrow, but confesses other sins for which he is sorry for motives which are special to them and not universal. The second is when, through inculpable ignorance, the penitent thinks that it is not necessary to be sorry for all mortal sins confessed, provided there be the requisite sorrow for some. In these cases there will be all the elements necessary for the validity of the sacrament, which, however, cannot infuse grace into the soul on account of the presence there of grievous sin still unrepented of.

[1] Sess. xiv, c. 4.

7. When Penance is received in danger of death with attrition and not contrition, some theologians insist on the necessity of the dying person making an act of perfect love of God, either to make sure before death of the validity of the sacrament of Penance or to satisfy the divine precept, which, according to them, requires all who are in danger of death to make an act of charity. However, when the dying person has made a good confession and been absolved even with attrition, he is certainly in the state of grace, nor is there any valid argument which proves that such a person is obliged to make an act of charity. Neither the dying nor those who assist them are as a rule conscious of any such obligation.

Because the Council of Trent, while describing the process of the sinner's justification, mentions acts of faith, hope, and the beginnings of love toward God, some theologians concluded that explicit acts of those virtues are required for Penance in addition to contrition. Those acts, however, are implicitly contained in the other acts of the penitent, and the fact that the Council explicitly mentions them does not prove that it teaches that they must be explicitly elicited by the penitent sinner in order to receive absolution for his sins.

Section II

The Purpose of Amendment

1. We saw in the preceding section that contrition is essentially a turning away with hatred from sin in order to approach to God, and so all true contrition necessarily implies a purpose not to sin again. If the truly contrite sinner thinks of the future, he can scarcely fail to form an explicit purpose of amendment, and some theologians hold that this explicit purpose is necessary, otherwise why should it find a place in the definition of contrition given by the Council of Trent? On account of its importance, it is well that the purpose of amendment should always be explicit, but still as it is virtually contained in all true sorrow for sin, and the fact that the Council explicitly mentions it does not prove that it must necessarily be explicit, the opinion which denies the absolute necessity of an explicit purpose of amendment for the validity of Penance is safe. A Roman council held in 1725 under Benedict XIII issued an instruction explaining how to make one's confession, and it only insists on an implicit purpose of amendment.

2. Whether it be explicit or implicit, the purpose of amendment must be sincere, efficacious, and universal.

It must be sincere, with a genuine intention to avoid sin in the future; it will not suffice to make profession of good intentions with the lips, without any real determination to carry them into effect.

It must be efficacious, or the sinner must be prepared to take the necessary means to avoid sin. A mere half wish and half resolve will not do. The sinner must be prepared to do and suffer anything rather than fall into sin again. It would, indeed, be unwise to try one's own determination by imagining all kinds of terrible temptations to sin to see if the will would remain constant, but at any rate the will must here and now be so rooted in good that, come what may, it is determined not to be moved.

There must also be a firm resolve to avoid all mortal sins for the future, not merely any that may have been confessed, but all others, or else there can be no friendship with God, whom we must love above all things. He cannot love God above all things who is prepared to offend him mortally. The purpose of amendment need not extend to all venial sins, provided that at least there is the sincere intention of avoiding some sin that is confessed, or at any rate of lessening the number of smaller transgressions.

CHAPTER IV

CONFESSION

1. CONFESSION, or the self-accusation of a penitent made to a priest with a view of obtaining sacramental absolution, is the second material element of Penance. Such confession is necessary because it is an essential element of the sacrament of Penance, which, as we have seen, is a necessary means of salvation for all who have fallen into grave sin after Baptism. The Council of Trent teaches that " From the institution of the sacrament of Penance, as already explained, the universal Church has always understood that the entire confession of sins was also instituted by the Lord, and is of divine law necessary for all who have fallen after Baptism."[1]

2. This confession must be made by word of mouth according to the practice of the Church and the teaching of the Council of Florence.[2] However, oral confession is not absolutely necessary for the validity of the sacrament, for mutes or penitents who know no language known also to the confessor, or those who are dying and are unable to speak, may confess by signs. Moreover, for good reason, anyone may write his confession, hand it to the priest to read, and accuse himself in general terms, such as " I confess all that is written there." Although mutes and other penitents may thus confess in writing, yet there is no obligation to do so, for sacramental confession should be secret and auricular, whereas writing makes it to some extent public, *litera scripta manet.*

Clement VIII, by a decree dated June 20, 1602, condemned the opinion that it is lawful to confess by letter to an absent priest or to receive absolution in the same way from an absent priest, and forbade the opinion ever to be put in practice; whence theologians conclude that such confession or absolution would be invalid by divine law, else the Pope could not have condemned it in such absolute terms. It seems to follow that confession by telephone would also be invalid, for confession would be made by one who is absent, not present with the priest at the time of receiving this sacrament, as is required by the conditions of its valid administration.

[1] Sess. xiv, c. 5. [2] Decretum pro Armenis.

3. A full, entire, and specific confession of all the mortal sins which have been committed after Baptism is prescribed by divine law. According to the Council of Trent,[1] "If anyone saith that in the sacrament of Penance it is not necessary by divine law for the remission of sins to confess all and singular the mortal sins which after due and diligent previous meditation are remembered, even those mortal sins which are secret, and those which are opposed to the two last commandments of the Decalogue, as also the circumstances which change the species of a sin . . . let him be anathema."

Theologians distinguish between the material and the formal integrity of confession. The material integrity consists in making known each and all the mortal sins which have been committed and which have not yet been confessed; the formal integrity consists in confessing all the mortal sins which occur to the mind after a diligent examination of conscience, or at least of all the sins which the penitent is bound under the circumstances to confess to the priest. It is formal integrity which is prescribed by divine law, and to procure it the penitent is bound before confession to make a diligent examination of his conscience. He should not be too anxious in making this examination; it will be sufficient if he employ that diligence which prudent men employ in worldly matters of importance. No general rule can be given to measure the length of time which the examination should occupy. Much depends upon the character of the individual, the length of time which has elapsed since the last confession, whether the penitent is accustomed to commit grave sins or not, and on similar circumstances. If the penitent cannot recollect the number of times that he has fallen into serious sin, he should mention the number as nearly as he can, and if he has fallen very frequently and almost continuously over a long period of time, it will be sufficient to mention the approximate number of times that he has fallen in the day or week, together with the length of time during which the habit has lasted.

4. A number of special questions must here be considered which touch on the integrity which is required in confession.

The Council of Trent, as we have just seen, teaches that those circumstances which change the nature of a sin must be made known; the theft of a consecrated chalice, which is a sacrilege, would not be adequately confessed by simply saying, "I committed theft." Not only circumstances which change the specific nature of a sin must be confessed, but also those

[1] Sess. xiv, c. 7.

which make a venial sin mortal and *vice versa*. The quantity in theft, then, must be indicated sufficiently to enable the priest to judge whether it was a mortal or a venial sin. Divines are not agreed whether circumstances which merely increase the malice of a sin but do not otherwise change its nature or moral quality are necessarily to be confessed. Many, with the Catechism of the Council of Trent, teach that there is an obligation to confess them, but as they give no convincing reason for their opinion and the contrary is held by many approved theologians, we may safely follow the more easy and the more lenient view.

It is not sufficient to confess as an internal sin one which was completed in external act. It would not be sufficient for a penitent to say that he desired to steal when he actually stole. For although the malice of sin is in the internal act of the will, and the external act adds nothing to it *per se*, yet, considered as human actions, an internal is different from an external act, and therefore as sins are bad human actions, an internal sin is specifically different from the same sin completed in external act.

It is a matter of controversy whether the mere effect of a sin must be confessed. If a man wounds another with the intention of killing him, and then repents and confesses unlawful wounding with the intention of killing, but afterward the man dies, will his assailant be obliged to go to confession again and confess homicide? The opinion is more probable that there is no such obligation, for such an effect of sin is not a sin, and we are only bound to confess sins; a sin is a human action, and when the victim dies his assailant does not act; he would now prevent the death if he could, and so he does not sin.

A vicious habit or custom of committing sin is a cause of sin rather than sin itself, and as sins are the matter of confession, *per se* it is not necessary to confess a sinful habit. If, however, the penitent did not use sufficient diligence to correct his bad habit, and this caused him inadvertently to commit sin, to blaspheme, for instance, then although the blasphemy, because inadvertent, is not sinful in itself, it is nevertheless voluntary and sinful in its cause, and so the uncorrected bad habit must be confessed. It is sometimes of importance for the confessor to know whether his penitent has contracted a habit of sin in order to be able to direct him, and so the confessor has a right to ask in confession whether a habit has been contracted, and the penitent is then under an obligation to tell the truth.

If many sins have been committed with others it is usually

immaterial whether they were committed with one and the same or with different persons. However, if a sin against chastity is committed with a married person, that circumstance must be mentioned, as it causes the sin to be against justice as well as against chastity. Similarly, if one or both accomplices in such a sin are bound by a vow of chastity, that must be mentioned. A religious who is a priest, and even if he is solemnly professed, would satisfy his obligation of confessing a sin against chastity by mentioning it, and adding that he is under a vow of chastity. For it is probable that there is no specific difference between the violation of a solemn and a simple and even private vow of chastity, and a priest, like a religious, is bound to chastity by vow.

Sins against chastity committed with relations have the special malice of incest, but with the exception of the first degree in the direct line of consanguinity, it is probable that the several degrees of kindred or affinity do not constitute a specific difference in the sin. There is a special malice and difformity in a sin of impurity committed with parent or child, but among civilized peoples this is happily of rare occurrence. Hatred against relations is not only against general charity, but is also contrary to piety, which binds relations to love each other with a special affection. Grave hatred will be a serious sin also against this virtue of piety if it is indulged in against near relations, not if it is against more remote kindred with regard to whom the obligation is not so strict.

Mere superiority or position of itself does not change the nature of a sin committed by rulers, magistrates, and people in authority. And so if a master sin with his servant, the sin does not of itself differ from ordinary fornication. If, however, the sin is also a violation of a special duty, then of course it will have a special malice, and so if a schoolmaster corrupt a youth committed to his care, he must mention this circumstance in confession.

The time at which a sin was committed does not change its nature, and so even though a sin which has been committed recently be confessed as though it were a sin of one's past life, the confession will be valid, but of course the practice is not to be commended, nor should it be indulged in.

5. Integrity of confession is prescribed by divine law, but as even divine law does not bind to what is impossible, physical or moral impossibility of making a full confession will excuse the penitent from obeying the law. And so danger of death when the dying person has not the strength or time for making

a full confession, or ignorance of any language known to the priest, or danger of violation of the seal of confession, or danger to life from pestilence or other cause, will excuse the penitent from making a full confession of all his sins. Innocent XI condemned the proposition that a large concourse of penitents on some great feast is a sufficient reason for absolving them without requiring a full confession. When a penitent has been absolved without making a full confession on account of the physical or moral impossibility of doing so, there always remains the obligation of supplying the defect in the next confession, unless the impossibility continues. A proposition asserting the contrary was condemned by Alexander VII. Moreover, that a penitent may lawfully ask for absolution without making a full confession, the following conditions must be verified:

(*a*) There must be some sort of necessity for making the confession here and now, as, for instance, the obligation of receiving the sacraments at Easter, or the hardship of remaining long without the sacraments or in a state of mortal sin.

(*b*) There must be no other confessor at hand to whom a full confession could be made without grave inconvenience.

(*c*) All sins must be confessed which can be mentioned without grave inconvenience, extrinsic to confession, which affects the penitent, the confessor, or some third person. The reason of this is because it cannot be supposed that Christ our Lord intended to bind penitents to make a full confession when it would entail such a hardship, whereas we know that he did command a full confession in spite of shame or other difficulties which are the natural accompaniments of confession of sin to a fellow-man.

6. By a general confession is meant a repetition of preceding confessions. Sometimes this is necessary, sometimes it is useful; otherwise it is harmful, likely to beget scruples, and lead the penitent to think about the past when he should be thinking about the present and the future, and so it should not be permitted.

A general confession is necessary when, through want of jurisdiction on the part of the confessor, or of a full confession or of sorrow for sin on the part of the penitent, former confessions were certainly invalid. In these cases all the invalid confessions must be repeated at least as far as the necessary matter is concerned.

A general confession at certain times extending over a certain period is frequently prescribed to religious by rule, which,

of course, should be dutifully observed. Moreover, it is useful for most people to make a general confession sometimes, especially when about to enter upon a new state of life, or when, while making a spiritual retreat and meditating upon sin, the grace of God moves the soul to greater sorrow for the past than one ordinarily feels. Sometimes a general confession may be allowed to allay doubts and scruples of conscience with regard to past sins.

Unless some notable spiritual fruit is to be hoped for, a general confession should in other cases besides the above be regarded as harmful, and should not be allowed.

CHAPTER V

SATISFACTION

1. It is part of the law of eternal justice that when we sin by following our own will instead of the will of God we must be brought back again into the right way by suffering what we would not. And so sin brings with it its penalty; when we have sinned we must suffer for it either in this world or the next. It is in keeping with this principle that by the institution of Christ one of the elements of the sacrament of Penance by which sin is forgiven is satisfaction. By satisfaction is understood some action which entails labour and pain, imposed by the priest in confession on the repentant sinner and accepted by him. We have already seen that the Council of Trent teaches that satisfaction is an element in the material part of Penance, and the same council in another place[1] adds: "Therefore the priests of the Lord ought, as far as the Spirit and prudence shall suggest, to enjoin salutary and suitable satisfactions according to the quality of the crimes and the ability of the penitent."

Confessors, then, are under the obligation of giving a penance to their penitents in satisfaction for the sins which they confess. As a general rule, they must give a grave penance for grave sins, otherwise they will sin grievously; but probably only a venial sin would be committed by neglecting to give a suitable penance for light faults.

In the early Church the penances enjoined were very severe, but, according to modern discipline, that is considered a grave penance and suitable for a penitent who has confessed grave sins which would bind under a grave obligation if it were imposed by ecclesiastical law. The Church encourages her children to make up by gaining indulgences for what the justice of God may require in addition to the comparatively light penances which are imposed nowadays.

The natural sequence of judicial acts in the tribunal of Penance requires that a penance should be enjoined by the priest before giving absolution, but it will be valid if imposed after absolution.

[1] Sess. xiv, c. 8.

The Ritual expresses a wish that, as far as possible, penances should be given which are contrary to the sins confessed, as almsgiving for avarice, fasting or other bodily affliction for lust, humiliations for pride, acts of devotion for sloth. For such as but seldom confess more frequent reception of the sacraments may be enjoined. The confessor should never apply to personal objects alms imposed on his penitents, nor enjoin public penance for secret sins.

2. The penitent is bound to accept and to execute a reasonable penance which his confessor has imposed on him. This obligation will be grave when a grave penance has been imposed for serious sins, otherwise it will bind under pain of venial sin. As the penitent is bound to accept the penance, so he is obliged to execute it at the time prescribed, if any time was fixed, or if not, then at a reasonable time. To defer its execution so long as to be in danger of forgetting it would be equivalent to not fulfilling it. It is best to execute the penance as soon as can conveniently be done.

If the penitent forgets the penance which was enjoined, he is excused from fulfilling any penance, as he is not bound to confess the same sins a second time, and he cannot substitute some other of his own choice, as he is not the minister of the sacrament.

3. In order to be sure of obtaining the sacramental effect of fulfilling the penance enjoined by the confessor, the penitent must be in the state of grace when he fulfils it, for God does not remit temporal punishment due to past sins in favour of one who is at enmity with him. However, by fulfilling the penance even in the state of mortal sin, what had been enjoined would have been executed, though it would not then effect its object of remitting temporal punishment due to sin confessed. It is a disputed point among theologians whether fulfilment of penance while in a state of sin would produce its effect when the sinner repented and again recovered the state of grace. Many theologians hold that it does so, and that it revives in the same way as a sacrament revives which has been validly received, but which does not produce grace at the time of its reception on account of the presence of some obstacle in the soul.

Although it is better and safer to execute the penance while in the state of grace, and if it is executed in a state of mortal sin it does not at any rate at once obtain its effect, yet it is not certain that any fault is committed by doing one's penance while in sin, any more than it is sinful to assist at Mass while

out of the friendship of God. One who in sin hears Mass on Sunday satisfies the precept, though he does not obtain the full fruit of the sacrifice; in the same way one, who while in sin says his penance, fulfils indeed his obligation, but does not thereby obtain at the time the sacramental fruit of his action.

4. Although a penitent may not of his own authority substitute another penance for that which was imposed by his confessor, yet he may for good reason get this commuted either by the same or by a different confessor. The same confessor may commute the penance which he himself imposed either in or out of confession, provided that so long an interval has not elapsed that the commutation cannot be considered one moral act with the confession and the imposition of the penance which is commuted. If the penitent goes to another confessor and asks for a commutation of a penance which has been enjoined him, the commutation must be granted in confession, otherwise the new confessor will have no jurisdiction over the penitent. The former confession need not be repeated; it is probable that it will be sufficient if the new confessor knows the penance which was given and for which a commutation is asked, together with the difficulty which the penitent feels in executing it.

CHAPTER VI

THE FORM OF PENANCE

1. We must distinguish the form which is required for the validity of the sacrament from the form which is commonly used according to the Ritual. "I absolve thee from thy sins" is sufficient for the validity of the sacrament, and probably even the mere words "I absolve thee." The Ritual form consists of the four short prayers beginning with *Misereatur*, etc., of which the third is the most important, as it contains the absolution from censures and from sin. The absolution from censures is always given before the absolution from sin for the sake of greater security, because if the penitent were under censure, he could not lawfully receive a sacrament. A rubric of the Ritual expressly lays down that the other three prayers may be omitted in shorter and more frequent confessions, but it is better always to add the last prayer, as it probably gives a special satisfactory efficacy to the good works which the penitent subsequently performs.

We saw above that absolution cannot be given validly by a priest to a penitent who is not morally present at the time. This sacrament is a judicial process, and the priest, who is the judge, pronounces sentence on the culprit who is present in court. The absolution must be pronounced by word of mouth, and the penitent must be within hearing distance, not farther distant than the ordinary tone of voice carries.

2. The priest cannot pass sentence without having a sufficient knowledge of the sins to be absolved and the dispositions of the penitent. It is not necessary, however, nor is it possible to have a distinct knowledge of the subjective malice with which the sins of the penitent were committed. The confessor may presume that the subjective malice of the penitent corresponds with the objective malice of the sin, unless he has special reasons for concluding otherwise. With his habitual knowledge of the malice of different sins the confessor passes a sufficient judgement on them if he quietly listens to the self-accusation of the penitent.

A merely historical account of the sins which a person has committed may suffice for absolution if the penitent resumes

them under some brief formula by which he expresses his desire to confess them and receive absolution for them. The priest must in this case, of course, retain at least a general and vague knowledge of the sins which he absolves.

3. A dying person, who through weakness or other causes is unable to make a full confession, may be absolved absolutely if he mentions what sins he can, or even if he asks for the absolution of his sins, for such a confession is formally integral.

The Ritual prescribes that a dying person who has lost the use of his senses is to be absolved even if he previously only expressed a desire himself or through others to receive absolution. In this case, also, it would seem that the absolution should be absolute.

Dying persons who have lost the use of their senses may be absolved conditionally even if they give no certain signs of a desire to confess or of sorrow for their sins. It may be that in such a state the dying person has the requisite dispositions, and is trying his best to give expression to them, and so the movements of the body or his laboured breathing may be indications of a wish to receive absolution. At any rate, in such a case of necessity we may use even a slenderly probable opinion, and it is now the common practice to absolve conditionally in such cases.

CHAPTER VII

THE MINISTER OF PENANCE

CHRIST our Lord gave his Apostles and their successors a twofold spiritual power to enable them to do the work which he commissioned them to do for the sanctification and salvation of souls. This twofold spiritual power is the power of Orders and the power of Jurisdiction.

The power of Orders has reference to the holy Eucharist, and it was conferred on the Apostles at the Last Supper when, after consecrating the blessed Eucharist, our Lord said to them: " Do this for a commemoration of me." The power of Orders has reference not only to the blessed Eucharist but to everything that is required to prepare and dispose men for the worthy and fruitful reception of it. And so, by the disposition of Christ our Lord the power of Orders is necessary for the forgiveness of sins. In other words, only priests can be ministers of the sacrament of Penance (Can. 871).

The power of jurisdiction is the power of ruling subjects, and it was given to the Apostles by Christ our Lord when he said to them: " Amen, I say to you, whatsoever you shall bind upon earth shall be bound also in heaven, and whatsoever you shall loose upon earth shall be loosed also in heaven. Both powers are implied in the institution of the sacrament of Penance when our Lord said to his Apostles: " As the Father hath sent me I also send you. Receive ye the Holy Ghost, whose sins you shall forgive they are forgiven them, and whose sins you shall retain they are retained."

The power of Orders is conferred by the sacrament of Orders. We will treat of the power of jurisdiction in a separate chapter.

CHAPTER VIII

THE JURISDICTION OF THE MINISTER OF PENANCE

1. PRIESTS are judges in the tribunal of Penance, and judges must have jurisdiction if their sentence is to take effect. As the Council of Trent teaches: "Wherefore, since the nature and order of a judgement require this, that sentence be passed only on those subject to that judicature, it has ever been firmly held in the Church of God, and this synod ratifies it as a thing most true, that the absolution which a priest pronounces upon one over whom he has not either an ordinary or a delegated jurisdiction ought to be of no weight whatever."[1]

Jurisdiction in general is the power of ruling subjects. We must distinguish jurisdiction in the internal forum from jurisdiction in the external forum. The latter has reference primarily and directly to the common good, to promote which it makes laws, administers justice, and directs the machinery of government. Jurisdiction in the internal forum refers directly and primarily to the good of the individual soul, whose actions it directs toward God. It is exercised either in the sacrament of Penance, when sins are forgiven, or outside the sacred tribunal, as when a dispensation is granted from ecclesiastical law. Again, jurisdiction is either ordinary or delegated.

Ordinary jurisdiction is that which is annexed to an office by law; delegated jurisdiction is committed to a person.

The Pope and Cardinals have ordinary jurisdiction for hearing confessions throughout the whole Church.

Local Ordinaries and parish priests and those who are in the place of parish priests have ordinary jurisdiction for hearing confessions in their respective territories, as also has the Canon Penitentiary. The superiors of exempt religious have ordinary jurisdiction for their own subjects (Can. 873).

One who has ordinary jurisdiction for hearing confessions can absolve his subjects wherever he finds them.

Ordinary jurisdiction ceases by loss of office, and, after a declaratory or condemnatory sentence, by excommunication, suspension from office, and interdict.

[1] Sess. xiv, c. 7.

The Ordinary of the place in which the confessions are heard grants delegated jurisdiction to hear the confessions of all penitents, whether secular or religious, to all priests, both secular and religious, even though they be exempt; but religious priests may not use the same without at least the presumed leave of their superior (Can. 874).

Local Ordinaries should not habitually grant faculties for hearing confessions to religious who are not presented by their own superior, nor without grave reason deny faculties to those whom he does present.

Local Ordinaries should only grant faculties for hearing confessions to such as have been proved fit for the office by examination, unless there is question of a priest whose theological knowledge they know from other sources (Can. 887).

Delegated jurisdiction can be granted with certain limitations as to time, place, persons, and cases.

Jurisdiction must be granted in writing or expressly by word, and without charge.

Parish priests, vicars of parish priests, and other priests with general delegation cannot delegate jurisdiction for hearing confessions without the faculty or mandate of the Ordinary of the place (*Com. on Canon Law*, October 16, 1919).

By Canon 881 all priests, whether secular or regular, approved for hearing confessions in any place, whether they have ordinary or delegated jurisdiction, can absolve validly and lawfully homeless persons and strangers who come to them from another diocese or parish, as also Catholics of any Oriental rite.

Without grave cause local Ordinaries may not revoke or suspend jurisdiction for hearing confessions, nor without consulting the Holy See can they lawfully take away faculties at one time from all the confessors belonging to a formed house of religious (Can. 880).

Delegated jurisdiction ceases when the mandate has been executed, when the time has elapsed or the number of cases for which it was given is exhausted, when the final cause of the delegation ceases; by the revocation of him who gave it directly intimated to the delegate, by the renunciation of the delegate directly intimated to him who gave it and accepted by him. It does not cease when he who gave it loses his authority, unless a clause was inserted to that effect, or jurisdiction was given as a favour to special persons to hear a confession and nothing has been done in the matter. If the case has been begun it may be finished (Can. 207).

However, if by inadvertence absolution is given after the

lapse of the time for which jurisdiction was granted, or after the number of cases was exhausted, it is valid (Can. 207, sec. 2).

Even when a priest has not jurisdiction habitually, the Church sometimes supplies it for the good of the penitent, so that the absolution given may be valid.

In danger of death all priests, even though not approved for hearing confessions, may validly and lawfully absolve any penitents from any sins or censures, however reserved and notorious they may be, and even though an approved priest be present, but the special law about absolving an accomplice must be observed (Can. 882).

In a case of common mistake when many of the faithful think that a priest has faculties while he has not, the Church supplies jurisdiction, but if a priest knowingly exposes himself to hear confessions without faculties he sins grievously.

The Church supplies jurisdiction in a case of positive doubt and probability as to whether a priest has it (Can. 209).

According to Canon 883 all priests while on a sea voyage, provided that they have received faculties for hearing confessions, either from their own Ordinary or from the Ordinary of the port where they embarked, or from the Ordinary of any intermediate port by which they pass on their journey, can, during the whole voyage, hear the confessions in the ship of any of the faithful on board with them, although the ship on its voyage may pass by or even stay for some time in various places subject to the jurisdiction of different Ordinaries.

Moreover, when the ship stops on the voyage they can hear the confessions both of the faithful who for any reason come on board, and of such as while they chance to be on land ask them to hear their confessions, and validly and lawfully absolve them even from cases which are reserved to the Ordinary of the place.

The Holy See has made special regulations with regard to the faculties of army chaplains (Can. 451, sec. 3).

CHAPTER IX

THE CONFESSORS OF RELIGIOUS

1. THE local Ordinary can give jurisdiction to hear the confessions of the members of a clerical order of exempt religious, as we have seen. Their religious superior, in accordance with the Constitutions, can likewise grant jurisdiction for hearing the confessions of the religious, of the novices, and of others who by day and night live in a house of the religious as servants, scholars, guests, or for the sake of their health. The religious superior can grant jurisdiction for hearing the confessions of all these to secular priests also, and to priests of other religious institutes.

In an exempt institute of laymen the superior proposes a confessor to the local Ordinary from whom he ought to obtain jurisdiction (Can. 875).

In an institute of laymen who are not exempt the local Ordinary designates a priest to hear confessions (Can. 529).

2. In each house of clerical religious it is prescribed that several lawfully approved confessors be appointed according to the number of the inmates, with power to absolve from cases reserved in the order in the case of exempt religious (Can. 518, sec. 1).

In institutes of laymen it is prescribed that an ordinary and an extraordinary confessor be appointed; and if a religious ask for a special confessor the superior should grant the request without in any way inquiring into the reason for the request, or showing displeasure at it (Can. 528).

To hear the confessions of novices in orders of men it is prescribed that one or more ordinary confessors be appointed according to the number of novices. In the case of clerical orders, these ordinary confessors should live in the novitiate; in the case of orders of laymen, they should at least frequently come to the novitiate to hear the confessions of the novices.

Besides the ordinary confessors some other confessors should also be appointed, and free access to them should be allowed the novices.

Moreover, at least four times in the year an extraordinary confessor should be allowed the novices, and all of them should

present themselves to him at least to ask for his blessing (Can. 566).

Finally, while the Constitutions which prescribe or advise confession at fixed times to appointed confessors should be observed, if a religious even, though exempt for his peace of conscience, go to a confessor approved by the local Ordinary, even though he is not one of those designated for religious, the confession is lawful and valid, and any privilege to the contrary is revoked; and such confessor can absolve the religious even from sins and censures reserved in the order (Can. 519).

3. To hear the confessions of religious women in their convents lawfully and validly, both secular and religious priests of any degree or office, except Cardinals, require a special jurisdiction which the Ordinary of the place grants where the convent is situated, and any special law or privilege to the contrary is revoked (Can. 876).

To hear the confessions of such religious women one ordinary confessor only is to be appointed for each convent, unless the great number of the religious or some other cause require more (Can. 520).

The ordinary confessor is appointed for three years, but under certain conditions his office may be prolonged for a second or even for a third period of three years (Can. 526).

An extraordinary confessor for each community of religious women should be granted at least four times in the year, and all the religious and novices should present themselves to him at least to ask for his blessing (Can. 521).

The local Ordinary should appoint some special confessors for every house where a religious community lives to whom any nun may easily have recourse in particular cases, and if any religious asks for such a confessor no superioress in any way may inquire into the reason for the request, refuse it, or show displeasure at it (Can. 521).

4. Besides these confessors a religious sister, for the quiet of her conscience and for greater progress in the way of God, may ask for some special confessor or spiritual director, and the Ordinary should readily grant the request, while taking care that abuse does not creep in (Can. 520).

A religious sister may also go to any confessor approved for women by the local Ordinary in any church or oratory, even semi-public, or in a place lawfully set apart for hearing the confessions of women, without being obliged to refer to her superioress; indeed, the superioress is not allowed to forbid her going, or to inquire about it even indirectly (Can. 522).

A religious sister who is seriously ill, though not in danger of death, may call any priest approved for hearing the confessions of women though not designated for religious, and confess to him as often as she wishes during her serious illness, nor can the superioress forbid it, directly or indirectly (Can. 523).

Any priest can absolve anyone in danger of death.

The confessors of religious women should be conspicuous for probity and prudence, forty years of age, unless in the judgement of the Ordinary a good reason otherwise require, and they have no power over the religious in the external forum.

CHAPTER X

RESERVED CASES

1. THE Council of Trent says:[1] "It hath seemed to our most holy Fathers to be of great importance to the discipline of the Christian people that certain more atrocious and more heinous crimes should be absolved not by all priests, but only by the highest priests." And so the absolution of certain graver sins and censures, or *cases* as they are called, is reserved to higher ecclesiastics. Ordinary confessors retain their jurisdiction for other sins, but it is limited, so that they have no authority over reserved cases. The motive for thus reserving sins is the spiritual good of the faithful, so that they may be deterred from committing those sins on account of the difficulty of obtaining absolution for them, and if unfortunately they should fall into them, they may have more skilful guides than ordinary confessors are presumed to be.

2. Reservation is the limitation of jurisdiction, and so in general all those who have ordinary jurisdiction, when they delegate it to others, may reserve some cases for treatment in their own tribunal.

In particular the Pope reserves certain censures and sins of all the faithful throughout the world. In nearly all papal cases both the censure and the sin are reserved, but the sin is reserved on account of the censure, so that if, through any cause, the censure is not incurred, then the sin is not reserved. False accusation of solicitation made against a confessor is an exception, and is reserved to the Holy See on its own account (Can. 894).

The Code of Canon Law divides the censures reserved by the Holy See into four classes. Some are reserved in a most special manner to the Holy See itself, others in a special manner to the Holy See, others are simply reserved to the Holy See, others, again, are reserved by the Holy See to the Ordinary. A fifth class of papal censures are reserved to none, and may be absolved on proper conditions by any priest with ordinary faculties.

Local Ordinaries should not reserve sins except after discussion in Synod or the necessity or usefulness of reservation

[1] Sess. xiv, c. 7.

has been approved out of Synod by the Chapter and some prudent priests who have the cure of souls. Bishops' cases should be few, only three or four, the more atrocious crimes, and not papal cases. The reservation should be withdrawn when it has obtained its effect (Can. 895-898).

In England the First and Fourth Synod of Westminster reserved to the bishop the case of a priest going to the theatre and thereby incurring suspension. In the United States two cases are reserved by provincial law: (*a*) The excommunication incurred by those who attempt to marry again after getting a civil divorce; (*b*) the excommunication incurred by those who marry before any non-Catholic minister.

Besides these cases reserved by law the bishops reserve a few cases to themselves for which the *pagella* of faculties must be consulted. When the bishops reserve a sin with a censure attached to it, it was a disputed point whether the reservation of the censure is the primary object in view, as in papal cases, or whether the reservation of the sin and of the censure are of equal importance and independent of each other. This question is now settled by Canon 2246, sec. 3, which decides that when a censure has been absolved or is not incurred the reservation of the sin ceases.

The superiors of religious orders may also reserve cases of their subjects. Clement VIII issued a list of eleven cases which they might reserve, and forbade them to reserve others except with the consent of a general or provincial chapter of the order (Can. 896).

3. Certain conditions are required in order that any particular sin may be reserved. First of all it must be a grave sin such as forms the necessary matter of confession, for a venial sin which the penitent need not confess cannot be effectually reserved. It is not the practice of the Church to reserve merely internal sins; there must be an external act and as such gravely sinful. So that a slightly indecent word, even if uttered with a seriously bad intention, would not fall under reservation if all sins of indecency were reserved. The sin must be completed and perfect in its kind, not merely attempted, for reservation is to be strictly interpreted. For the same reason it must be certain that the sin is reserved, so that any prudent doubt of law or of fact whether a particular sin is reserved is sufficient to enable the confessor to give absolution without special faculties.

4. Those who are under the age of puberty do not incur papal cases unless they are expressly included in the law. The

only papal cases in which they are so included is the violation of the enclosure of nuns. The same rule may be applied to bishops' cases, unless a bishop has made known his intention to bind even those who have not reached the age of puberty. Ignorance of a censure, unless it be crass or supine, excuses from the censure, as is expressly laid down in the Decretals.[1] As in papal cases the reservation of the sin is on account of the censure annexed to it, and ignorance excuses from incurring this, therefore ignorance will excuse one from incurring papal reserved cases to which a censure is attached. The reservation of false accusation of solicitation is very probably penal, as theologians gather from the words by Benedict XIV in the Constitution *Sacramentum Poenitentiae*, and as ignorance of a penalty excuses one from incurring it, therefore ignorance will excuse one from incurring this reserved case. This opinion, however, which many hold to be still probable, is hardly of practical importance, for the ecclesiastical judge who receives the false accusation will certainly warn the culprit of the penalty incurred by false accusation.

It is a disputed point whether ignorance excuses from incurring bishops' cases or not. It excuses, indeed, from incurring any *censure* inflicted by any ecclesiastical superior, but it certainly does not excuse from incurring a reserved *sin* if the bishop has expressed his intention of reserving it even when committed in ignorance of the reservation. Otherwise it is probable that ignorance excuses in episcopal as well as in papal cases, for reservation is partly penal, and it cannot attain its end of deterring the faithful from committing reserved sins if they are ignorant of the reservation.

According to Canon 900, all reservation ceases:

(1) When either the sick who cannot leave the house make their confession, or those about to be married with a view to marriage.

(2) Whenever either the lawful superior on being asked has refused to grant faculties for absolving a particular case, or in the prudent judgement of the confessor faculties for granting absolution cannot be asked for from the lawful superior without serious detriment to the penitent or without danger of violating the seal of confession.

(3) When the penitent is outside the territory of him who reserved the case, even though he left it only to obtain absolution. But, according to the Commission for the Interpretation of Canon Law a stranger (*peregrinus*) incurs the

[1] C. 2, de const. in 6to; can. 2229, sec. 3, i.

reserved cases of the place where he is staying (A.A.S. xii, 575).

5. In general absolution from reserved cases may be obtained from the person who reserved them, from his successor, his superior who has jurisdiction over the same subjects, and from anyone who has been specially delegated by one of these to grant absolution.

Canon 2237, sec. 2, gives Ordinaries power to absolve from cases simply reserved to the Holy See when they are occult either in person or by their delegate.

The Vicar General and the Canon Penitentiary can absolve from cases reserved to the Ordinary (Can. 401).

Vicars forane have power to absolve from cases which the bishop reserves to himself, and they should be able to delegate the same power to other priests of their district (Can. 899, sec. 2).

By the same canon, sec. 3, parish priests are empowered to absolve from cases which Ordinaries reserve to themselves during the time allowed for making one's Easter duties, and missionaries have the same power during missions.

When the penitent is in danger of death any priest can absolve him from any sins or censures however they may be reserved, but if a penitent in that condition has been absolved from a censure *ab homine* or one most specially reserved to the Holy See by a priest without special faculties, and he recovers, he is bound under pain of falling again under censure to have recourse to him who inflicted the censure if it was *ab homine*, or to the Sacred Penitentiary or to the bishop or someone else with special faculties and submitting to their commands (Can. 2252).

Moreover, when it is necessary for a penitent to receive absolution in order to avoid scandal or loss of reputation, or because he must say Mass or make his Easter Communion, or when he feels it a great hardship to remain in the state of sin during the time required for obtaining special faculties to absolve him, a simple confessor may absolve him from all reserved cases (Can. 2254).

If the penitent does not feel it a hardship already the confessor may induce him to feel it, and then absolve him. But in any case the confessor must impose on the penitent whom he has absolved the obligation of having recourse within a month at least by letter and through the confessor, if it can be done without serious inconvenience, without mentioning the penitent's name, to the Sacred Penitentiary or to the bishop,

or to any other superior endowed with faculties for the case, and of obeying his commands. Unless the penitent fulfils this obligation he will again fall under the censure.

The ordinary confessors of exempt religious men of clerical institutes can absolve from cases reserved in the order; as also can confessors approved by the local Ordinary (Can. 518, 519).

If a confessor without special faculties absolves from a reserved case in ignorance of the reservation, the absolution is valid, except in the case of a censure *ab homine* or one most specially reserved to the Holy See (Can. 2247, sec. 3).

CHAPTER XI

DE ABUSU SACRAMENTI POENITENTIAE

1. SANCTISSIMIS institutis abuti hominum malitia valet, nec sacramento Poenitentiae excepto. Ecclesia tamen nihil intentatum reliquit ut abusus hujus sacramenti evitentur vel ut iis si forte occurrant aptum remedium praebeatur. Gregorius XV aliique Romani Pontifices et praesertim Benedictus XIV leges tulerunt contra sollicitationem in sacro tribunali ac absolutionem complicis in peccato turpi. De his in hoc capite agimus ac primo de sollicitatione (Can. 904).

De crimine sollicitationis in sacro tribunali Benedictus XIV Constitutione *Sacramentum Poenitentiae* tria statuit. Primo committit ac mandat omnibus locorum Ordinariis universi orbis christiani in suis respectivis dioecesibus ut diligenter omnique humano respectu postposito inquirant et procedant contra omnes ac singulos sacerdotes, tam seculares quam regulares quomodolibet exemptos, qui sollicitationis sunt rei, eosque graviter puniant. Rei autem sunt sollicitationis qui aliquem poenitentem, quaecumque persona illa sit, vel in actu sacramentalis confessionis, vel ante, vel immediate post confessionem, vel occasione, aut praetextu confessionis vel etiam extra occasionem confessionis in confessionali, sive in alio loco ad confessiones audiendas destinato aut electo, simulatione audiendi ibidem confessionem, ad inhonesta et turpia sollicitare, vel provocare, sive verbis, sive signis, sive nutibus, sive tactu, sive per scripturam aut tunc aut post legendam, tentaverint, aut cum eis illicitos et inhonestos sermones vel tractatus temerario ausu habuerint. Secundo, omnes et singuli sacerdotes ad confessiones audiendas constituti tenentur suos poenitentes quos noverint fuisse ab aliis sollicitatos sedulo monere de obligatione denunciandi locorum ordinariis personam quae sollicitationem commiserit, etiamsi sacerdos sit qui jurisdictione ad absolutionem valide impertiendam careat, aut sollicitatio inter confessarium et poenitentem mutua fuerit, sive sollicitationi poenitens consenserit, sive consensum minime praestiterit, vel longum tempus post ipsam sollicitationem jam effluxerit, aut sollicitatio a confessario non pro seipso sed pro alia persona peracta fuerit. Tertio, potestas absolvendi eos

qui sive per se sive per alios apud ecclesiasticos judices falso innoxios sacerdotes sollicitationis accusant reservatur Summo Pontifici, ut tam detestabile facinus metu magnitudinis poenae coerceatur (Can. 894).

2. Ex dictis igitur, quae fere ad verbum in Constitutione Benedicti XIV inveniuntur, constat Ordinarios teneri sub gravi inquirere in sollicitantes ac hujus criminis reos graviter punire. Praxis Sacri Officii est ut post unam alteramve denunciationem sacerdos denunciatus observetur. Post tertiam vero contra suspectum procedi solet. Ad formale examen vocantur parochi aliique spectatae virtutis viri qui de indole et qualitatibus denunciantis et denunciati sub juramento de veritate dicenda et de secreto servando testimonium proferunt. Poenae jure reis infligendae sunt privatio omnium facultatum ad confessiones excipiendas, suspensio ab exercitio ordinis, privatio beneficiorum, privatio vocis activae et passivae si sit regularis, omnes tamen sunt ferendae sententiae (Can. 2368). Termini adhibiti in crimine definiendo strictae sunt interpretationis.

In actu sacramentalis confessionis : hoc intelligendum est de intervallo quod intercedit inter benedictionem et absolutionem etiam si poenitens non fuerit absolutus ob defectum dispositionum vel ob aliam causam.

Ante vel immediate post : ita ut nulla actio non referibilis ad sollicitationem intercesserit.

Occasione vel praetextu confessionis: occasio est quando confessio sequebatur vel sequi debebat juxta intentionem petentis. Praetextus habetur quando confessarius ficte proponit confessionem ut sollicitet. Quare si mulier et sacerdos fingunt confessionem faciendam ad alios decipiendos et ad tutius peccandum non est locus denunciandi, nec probabilius si poenitens praetexat confessionem ad sacerdotem vocandum et sollicitandum. Probabilius non est denunciandus sacerdos qui propter cognitam ex confessione fragilitatem mulieris eam domi sollicitat, quia occasione scientiae ex confessione habitae sollicitat, non occasione confessionis.

In confessionali sive in alio loco ad confessiones audiendas destinato aut electo simulatione audiendi ibidem confessionem: unde non denunciandus est sacerdos qui sollicitat mulierem stantem ante confessionale, deest enim simulatio audiendi ejus confessionem.

Inhonesta et turpia: haec significat gravia peccata contra sextum decalogi praeceptum. Graviter inhonesti sermones vel tractatus quin ulterius procedatur constituunt sollicitationem si ceterae conditiones habeantur. Qui externe consentit poenitenti sollicitanti videtur esse denunciandus.

3. Omnes confessarii monere suos poenitentes, sive feminas sive masculos tenentur quos ab aliis sacerdotibus fuisse sollicitatos noverint de obligatione denunciandi sacerdotes sollicitantes locorum ordinariis vel Sanctae Sedi per Sacrum Officium vel per Poenitentiariam. Infra mensem ab accepta cognitione denunciationis faciendae obligatio est implenda, aliter poenitens sollicitatus incurrit excommunicationem nemini reservatam ex Constitutione Pii IX, *Apostolicae Sedis*, et Can. 2368, sec. 2. Omnes etiam qui certo sciant casum sollicitationis sacerdotem reum denunciare tenentur, non tamen sub censura. Confessarii monere poenitentes de obligatione denunciandi sollicitantes tenentur, etiamsi praevideant eos obligationem non impleturos, nisi sint in articulo mortis, tunc enim dissimulare ob salutem animae licet. Nec capax est absolutionis qui onus implere recusat vel saltem nisi promittat se onus impleturum quum primum poterit. Confessarius audiens poenitentem qui sollicitatus fuisse videtur, circumstantias casus investigare debet ut moralem certitudinem de crimine patrato acquirat antequam obligationem denunciandi sollicitantem imponat. Denunciatio juridice est facienda, ac proinde qui denunciat personaliter adire debet ordinarium loci ubi crimen patrabatur, ac sub juramento testimonium dare. Qui ordinarium adire nequit, ad eum scribat, ut delegatum sibi substituere valeat ad denunciationem accipiendam. Scriptae denunciationes anonymae nullius sunt momenti, nec sufficiunt ad obligationi satisfaciendum.

Qui falso juridice accusat sacerdotem sollicitationis gravissimum committit peccatum et incurrit in excommunicationem cujus absolutio speciali modo Romano Pontifici reservatur a qua nequit ullo in casu absolvi nisi falsam denunciationem formaliter retractaverit, et damna reparaverit. Peccatum etiam ratione sui reservatur Sanctae Sedi (Can. 2363, 894).

4. Ex eadem Constitutione Benedicti XIV, *Sacramentum Poenitentiae*, confessarius poenitentem quocum peccatum grave contra castitatem commiserit a peccato complicem absolvere nequit; qui autem talem complicem absolvere attentat in casum incidit specialissimo modo reservatum Romano Pontifici. Eandem poenam incurrit qui se absolvere fingit vel, sive directe sive indirecte, complicem inducit ad peccatum complicitatis tacendum quum ad confessionem venit. Si vero poenitens bona fide vel inadvertenter peccatum complicitatis omiserit dum complici confitetur valide ab eo absolvitur. Idem videtur dicendum si complex ab alio sacerdote directe a peccato complicitatis jam absolutus idem peccatum postea tamquam

materiam liberam sacerdoti complici confitetur. Praestat autem ut sacerdos complex nunquam confessionem complicis excipiat nisi in casu necessitatis (Can. 884, 2367).

Complex vero in peccato turpi hic intelligitur qui interne et externe grave peccatum contra castitatem sive verbis sive aspectu sive facto cum sacerdote etiam ante sacerdotium susceptum commiserit. Ut incurratur censura absolutio debet esse formalis ita ut sacerdos sciat se absolvere poenitentem complicem, vel saltem ut ejus ignorantia sit crassa et supina. Requiritur etiam ut poenitens cognoverit se peccasse cum hoc sacerdote sive in actu peccati sive saltem ante absolutionem acceptam, quamvis non sit necessarium ut poenitens confessarium in actu confessionis agnoscat. Sacerdos igitur qui larvatus et incognitus cum muliere peccavit eam adhuc ignorantem suum complicem absolvere valide potest, nam aliter sese proderet poenitenti ac alii confessario ad quem poenitens absolutionis causa accederet.

5. In articulo seu periculo mortis absolutio complicis data a complice sacerdote semper est valida ne anima pereat, ait Benedictus XIV. Praeterea complex moribundus qui nequit aut non vult alteri sacerdoti confiteri licite etiam a complice sacerdote absolvitur. Si vero alius sacerdos etiam non approbatus adsit, vel sine infamia et scandalo advocari possit ad confessionem accipiendam, sacerdos qui complicem in periculo mortis constitutum absolvat excommunicationem non evitat.

In locis remotis ubi complex alium confessarium habere nequit, et in periculo est ne sine absolutione discedat e vita, potest probabiliter a complice absolvi ne anima pereat. Poterit etiam sacerdos facultatem obtinere ut complicem in tanta necessitate absolvat.

CHAPTER XII

THE DUTIES OF A CONFESSOR IN THE CONFESSIONAL

THE confessor does not satisfy his obligations merely by absolving the penitents who come to him, and refusing absolution to those who are not properly disposed. In the confessional he holds the place of Christ for the reconciliation of sinners with God; he is also the minister of the sacrament, and as such he is bound to see that it is validly and lawfully received by the penitent. In other words, as theologians say, the confessor is the spiritual father, doctor, counsellor, and judge of his penitents. Something must be said on each of these heads (Can. 888, sec. 1).

SECTION I

The Confessor as Spiritual Father

The confessor should remember how our Lord used to act toward sinners during his mortal life; with what charity, forbearance, and patience he dealt with them, and he should strive to imitate his divine model. Like him he should be interested in the souls of men, not in their social position, age, or sex. Whoever they may be, he should receive all sympathetically and kindly. This does not mean that he should treat all precisely in the same way. Just because of his interest in his penitents and of his sympathy for them, he will treat them as their various needs demand; not expecting the same degree of virtue in all, nor attempting to raise all to the same height of sanctity. He should try to discover what God designs for each soul and be content to second the inspirations of the Holy Spirit.

In dealing with pious penitents, especially of the other sex, he should be brief and austere, otherwise he will lose much time with little or no fruit, and expose himself to no little danger. With these penitents, especially, he should treat of nothing in the confessional except what concerns their consciences, and that in a fatherly way, but briefly. Even if he recognizes his penitents, it will be better as a rule not to show

that he knows them for what they are outside the confessional. He will thus be able to deal with them for the good of their souls with more freedom and detachment.

Section II

The Confessor as Physician of Souls

1. It is the confessor's duty not merely to reconcile the sinner with God by absolving him from sin, but by suggesting to him means and remedies against relapse to enable the penitent to lead a good life in future. The confessor is the spiritual physician of souls, and he should be skilled in diagnosing the diseases of the soul and in applying the proper remedy. Catholic literature is very rich in ascetical books whose special province it is to map out the way of spiritual progress, to point out and describe the many vices and other obstacles to be overcome by the Christian wayfarer, and the means to be taken for the purpose. Among the best known of such works are: Rodriguez' *On the Practice of Christian Perfection*, *The Devout Life* of St Francis de Sales, *The Spiritual Exercises* of St Ignatius, *The Spiritual Combat*, by Scupoli, etc. The confessor should make himself as familiar as possible with one or two such treatises, and he should have tested their worth by applying the lessons which they give to the conduct of his own life. Here it will be sufficient briefly to indicate some general remedies which may be usefully prescribed in most cases where there is a sincere desire to amend. Frequent and fervent prayer, frequent reception of the sacraments of Penance and the Eucharist, pious meditation on the end of life and on the presence of God, avoiding evil company and the occasions of sin, avoiding idleness by constant occupation of mind and body, as far as is possible. Besides these general remedies, the confessor may suggest special ones for the correction of particular vices. The selfish and thoughtless should be told to practise kindness to those about them; the proud, acts of humility; the voluptuous, mortification of their passions; the envious, praising the good deeds of others; and so on. There is special difficulty as to the best method of treating recidivists and those who are placed in an occasion of sin, and something must now be said on each of these classes.

2. A recidivist is one who after many confessions has fallen into the same sin without any or with scarcely any amendment. There is a controversy among theologians as to whether and on what conditions such a one may be absolved. Certain

rigorists maintained that a recidivist could not be absolved until, by abstaining from sin for a considerable time, he had proved the sincerity of his conversion. According to the judgement of St Alphonsus, there is intolerable rigour in this opinion. On the other hand, laxists held that a penitent who has contracted a habit of sin should be absolved at once without delay even though there be no hope of amendment, provided that he make verbal profession of his sorrow and purpose of amendment. The foregoing proposition was condemned by Innocent XI, and if it were put in practice it would lead to grave abuses. For a confessor cannot give absolution to one whom he cannot reasonably judge to be truly sorry for his sins. There are cases where in spite of verbal protestations the confessor cannot form even a probable judgement that the recidivist is truly sorry for his sins. And sometimes it will benefit the penitent to defer absolution for a short time even if it might absolutely be given at once. The common opinion lies between these two extremes, and we cannot do better than explain it in the words of Lugo, for the lengthy discussions of subsequent authors on this question have added nothing of substantial value to the older doctrine.

(*a*) If a confessor judge a penitent, notwithstanding a past habit of sin, to have here and now a true sorrow and a firm resolve not to sin again, he can absolve him; because present sorrow and a purpose of amendment are sufficient, and future amendment is not required. And so he may absolve him even though he thinks he will fall again.

(*b*) But in the second place it is certain that when a priest, considering the past habit of sin, the propensity to it, and other circumstances, cannot judge the penitent to be sufficiently averse from the sin, he cannot absolve him, however much the penitent asserts that he is sorry, because if the priest does not believe him he has not the requisite ground for giving absolution.

(*c*) It will help toward forming a judgement about the present dispositions of the penitent if he show special signs of sorrow, or if he has already tried to correct his habit, or if, having never before been told what means to employ to correct his habit, now, on being told, he willingly accepts and proposes to employ them.

(*d*) Finally, it will sometimes be useful, with the penitent's leave, to put off absolution for some days so as to excite the penitent to make greater efforts to overcome himself and show signs of real amendment.[1]

[1] Lugo, *De poenit.*, xiv, n. 166; can. 886.

3. An occasion of sin is an external circumstance which leads one to commit sin. It is a proximate occasion if, when a person is placed in it, it leads him to commit sin oftener than not; otherwise it is remote. It is a necessary occasion if he cannot avoid it by using ordinary diligence; otherwise it is voluntary.

(*a*) There is no necessity to avoid remote occasions of sin, for it is not possible to do so, and in spite of them sin may be avoided by using the proper means.

(*b*) We are bound to avoid proximate and voluntary occasions of sin, for we cannot remain in them without exposing ourselves to the proximate danger of committing sin, and if we voluntarily choose to remain in a proximate occasion we voluntarily choose the sin. As we are bound to avoid sin we are bound to take the necessary means for that end. This doctrine is confirmed by the 61st, 62nd, and 63rd propositions, condemned by Innocent XI.

(*c*) A necessary occasion is one which we cannot avoid. It is physically necessary if we cannot physically get away from it; it is morally necessary if it is more difficult to avoid it than to keep from sin while in it by using proper means and precautions.

There is no obligation to avoid necessary occasions of sin, for we cannot be obliged to do what is impossible; but we are bound to take the necessary means to avoid sin in spite of being in the occasion, and such means are always at hand if we have the good will to use them, for God's goodness will never permit us to be tried above our strength. By using the means to avoid sin while placed in an occasion of sin, we make the proximate occasion remote, as theologians say.

It follows from this that one who finds his ordinary avocation in life, which is supposed to be an honest one, a proximate occasion of sin to him is seldom bound to give it up; he is only bound to make the occasion remote, which is generally possible with a good will and the help of God's grace.

Section III

The Confessor as Counsellor

1. The duties of the confessor require considerable expert knowledge in one who aspires to the office. He must in the first place have a competent knowledge of Christian morals and of all that belongs to the valid and lawful adminstration and reception of the sacraments. St Alphonsus teaches us

that it is not sufficient merely to know the general principles of Christian morality; the confessor must have considerable skill in applying those principles correctly, according to the infinite variety which is found in human actions. The confessor should have received a thorough grounding in moral theology during the course of his priestly studies, and he should continue to keep it up during the rest of his life, for it is quickly lost unless means are taken to keep it fresh in the mind. The Church shows that she is conscious of this danger by insisting that all who have the cure of souls should at certain times every year be present at the conferences of the clergy, where moral questions are discussed. Every confessor is not called upon to be an authority in moral questions, but at least he should be able to decide correctly ordinary doubts and difficulties, and know when to doubt about more serious questions.

2. The confessor is bound to instruct a penitent before he can give him absolution when he finds that he is ignorant of what he must know in order to receive the sacrament of Penance validly and lawfully. And so if the penitent does not know how to make an integral confession, or how to make an act of contrition, the confessor must instruct him. In the same way, he must teach one who is ignorant of those truths which must be believed in order to be saved. Innocent XI condemned the proposition that a man is capable of receiving absolution however great may be his ignorance of the mysteries of the Faith, and even if through culpable negligence he does not know of the mystery of the most blessed Trinity and of the Incarnation of our Lord Jesus Christ. Ignorance of those Christian truths whose knowledge is required by precept, and of the obligations of one's state of life, is not a bar to valid absolution, and in spite of it absolution may lawfully be given on condition that the penitent undertake to learn what he should know, if the confessor cannot give the necessary instruction at once.

3. No general rule can be laid down as to whether the confessor should instruct a penitent whom he finds to be ignorant on other matters. Various cases must be distinguished. If the ignorance of the penitent is morally hurtful to him, as is an erroneous conscience which thinks that a perfectly harmless act is sinful, the confessor should put his conscience right. Again, if the penitent asks whether an action is lawful or not, the confessor should instruct him. In other cases, if the penitent is ignorant of his obligation, and he would not fulfil it even if he were told, as a general rule the confessor may and

should abstain from telling him under the circumstances. For the information would do no good, but only harm, inasmuch as the sins which hitherto were only material would henceforth be formal. There is, however, an exception to this rule when what is done in ignorance and good faith is a cause of public scandal, for then the public good requires that the penitent should be told even to his temporary private loss.

On these principles authors agree that if a confessor detect a diriment impediment between parties who think that they are validly married, he should not inform them of it, at any rate until he has obtained the necessary dispensation, so that he can at once proceed to set the matter right.

Section IV

The Confessor as Judge

1. As judge in the tribunal of Penance the confessor passes sentence and imposes satisfaction proportionate to the sins confessed. If the penitent makes a full confession, is truly sorry for his sins, and is ready to fulfil to the best of his ability all his grave obligations at least, there is nothing to prevent the confessor giving a penance and absolution at once. There is no necessity for putting questions to well-instructed penitents who make their confession with care and diligence, or to those who have only light matter to confess. If, however, the penitent does not fully declare the number and species of his grave sins, or if the confessor is not satisfied about his dispositions, he is bound to question him to procure a full confession and the necessary dispositions before giving absolution.[1]

If the confessor knows that the penitent has committed some serious sin, but says nothing about it in confession, he should question him as to whether there is anything else on his conscience. If the penitent denies that there is, he should as a rule be absolved; it is a received maxim that "the penitent must be believed in his own favour as well as against himself." Even if the sin was known to the confessor from the confession of someone else, he must not, of course, put any question which would amount to a violation of the seal, but he may put a general question as to whether there is anything else, and if the penitent denies that there is, he may as a rule absolve even then. It may be that the penitent did not commit formal sin, or that he has forgotten it, or thinks that he is not bound

[1] 4 Lat., c. 21; Ritual.

to mention it to this confessor, or there may be some mistake on the part of the confessor or the informant. Still, if it is quite evident to the confessor that the penitent is making a bad confession, and so is not disposed for absolution, he cannot, of course, absolve him.

2. The confessor's obligation of putting questions to the penitent in order to supply any defect on the part of the latter is a grave one. Still it is only secondary; the obligation lies with the penitent in the first place, and so the confessor may be excused from grave sin if occasionally he does not put questions even to obtain what is necessary matter for confession. We may allow this especially when the confessor is weary after hearing a great many confessions, and, partly through weariness, partly through some slight negligence, fails to ask questions which are *per se* necessary.

3. The Ritual and theologians warn the confessor against putting unnecessary and indiscreet questions to the penitent. By doing so he may easily scandalize him or even teach him to commit sin. This is especially the case with regard to the young. In the matter of chastity it is a maxim that it is better to fail in putting many questions than to put one which is not necessary.

The confessor should be moderate in questioning the penitent, and only put questions about matter in which it is probable that he has committed sin. He should remember that the penitent is only bound to confess what his own conscience accuses him of; he does not sin nor is he bound to confess according to the conscience of his confessor.

CHAPTER XIII

MISTAKES MADE IN HEARING CONFESSIONS

1. ONE who culpably causes unjust harm to another is bound in justice to repair that harm as far as he can. Even if the action which causes harm to another is done innocently, there will nevertheless arise an obligation to prevent the harm as far as possible as soon as the danger is noticed, and if there is grave negligence in doing this without reasonable excuse, injustice will be committed and the obligation of making restitution incurred. A confessor who admits a penitent to confession is bound in justice to absolve him if he is properly disposed for absolution. And so if he has neglected to do so, he must repair the error afterward, especially if the penitent were in danger of death and may die in sin without sacramental absolution.

Similarly, if the confessor gave his penitent false instruction in faith or morals, or bad advice, or bound him to make restitution when he was under no obligation to do so by the law of God, or released him from such an obligation when he was really under it, the confessor must afterward correct his mistake, taking the precaution to ask the penitent's leave to say something to him about his confession if an opportunity is afforded him only out of confession. When the penitent was wrongfully compelled to make restitution with grave fault on the part of the confessor, the latter is bound in justice to make him restitution for the loss that he has suffered, if he cannot otherwise recover his money. The confessor is in the same way bound to make restitution to the defrauded creditor when, with grave fault, he released a penitent from the obligation of paying a just debt, if in consequence the penitent is now unwilling or unable to fulfil his obligation.

2. If the confessor merely neglected to impose a penance, or supply for the deficiency of the penitent's confession by questioning him, or failed to correct some mistake that he was labouring under, or to warn him of the obligation of making restitution, he did not thereby sin against justice, and he is not bound to make restitution, unless indeed in the circumstances his silence was equivalent to positive approval. Still,

if knowingly and wilfully he did any of these things, he committed sin, and in as far as harm to his penitent or to others ensued he violated charity, which obliges every man to do what he can to prevent loss and damage to others. Even out of confession if he can prevent harm being caused by his failure to do his duty in the confessional, he should with the penitent's leave do his best to prevent it.

CHAPTER XIV

THE SEAL OF CONFESSION

1. By the seal of confession is understood the religious obligation to keep secret anything that is manifested in sacramental confession.

This obligation is imposed by the natural, the divine, and by positive ecclesiastical law. For the very fact that a penitent makes known his sins in secret to the confessor, with a view to obtaining absolution, lays upon the confessor the strictest obligation in justice and in charity not to violate the trust placed in him, much as a doctor or a lawyer when consulted about private matters is bound to observe secrecy with respect to what has been confided to him. Our Lord, who commanded all who fall into grave sin after Baptism to go to confession, could not have imposed such an obligation without requiring confessors to observe the strictest secrecy about what they hear in confession.

The Church, too, in the Fourth Council of Lateran (c. 21) forbids the confessor under grave penalties ever to betray by word, sign, or in any other way, what he has heard in sacramental confession. The Code punishes the confessor who presumes directly to violate the seal of confession with excommunication most specially reserved to the Holy See, if indirectly, with severe penalties. Others who violate the seal are to be severely punished (Can. 2369).

The obligation of the seal of confession differs from all other secrets in that it is never lawful under any circumstances to make known the least thing that has been manifested by a penitent in confession. If questioned about confessional matter, even in a court of justice, the priest must always answer that he knows nothing about it, as with perfect truth he may do, for what he knows as a confessor, he knows as the vicegerent of God, not as man. Not even to save his life or the lives of others may a priest violate the seal; like Fr. Henry Garnett, or St John of Nepomuk, he must be prepared to lay down his life rather than break the seal. He is never released from his obligation even by the death of the penitent, for people are unwilling that their secret sins should be mentioned even after their death.

A grave sacrilege would be committed by the direct manifestation of the least fault known from sacramental confession, but theologians allow that if the danger of confessional matter becoming known is very remote there may be only venial sin in indirect violation of the seal.

2. The person who hears the sacramental confession of another made with a view to obtaining absolution is primarily bound by the seal. Even if such a person were not a true priest, but merely represented himself to be one, he would, nevertheless, be bound by the obligation of the seal, for he could not violate the trust placed in him without such violation injuring the penitent and turning people away from the sacrament.

Not only the priest, but all others, who mediately or immediately come to know anything confessed to a priest with a view to absolution, are bound by the obligation of the seal. Superiors, then, who are asked for faculties to absolve from reserved cases, other confessors whose advice is asked about cases of conscience, anyone who by design or by accident overhears what is said in confession, are bound equally with the confessor.[1] The obligation of the seal is imposed in favour of the penitent; it is the penitent's secret, but he himself is not bound by it. It does not follow, however, that penitents may without let or hindrance talk to others about what the confessor has said or done to them in the confessional. They are at least bound by a natural obligation to reveal nothing which would tend in any way to injure or aggrieve the confessor. A confessor may speak with the penitent in the confessional about past confessions in as far as this is necessary for the present guidance and instruction of the penitent; but outside of confession he may not speak of confessional matter even to the penitent without the latter's express leave freely given. There is a question discussed among theologians as to whether one who finds and reads the written confession of another violates the seal or is bound by it. It is better to distinguish various cases. If the circumstances in which the paper is found show that it has been used for the purpose of making a sacramental confession, as when it is found in the confessional, then the written confession is a sort of continuous confession, and knowledge derived from it comes under the seal. The same must be said of a letter written to an ecclesiastical superior for faculties to absolve from a reserved case. Otherwise, inasmuch as the writing down of one's sins

[1] Can. 889.

is not sacramental confession, knowledge gained from such a source without reference to actual confession does not seem to come under the seal.

Similarly, there is a difficulty about giving or refusing to the penitent an attestation that he has been to confession. If the penitent is unworthy of absolution and has not been absolved, but asks for the confessor's attestation that he has been to confession, what is the latter to do? If the refusal of the attestation would in the circumstances show that the penitent was not absolved, it is clear that it cannot be refused without a violation of the seal; in other circumstances the confessor will be free to give or refuse it.

3. Not only all sins mentioned in confession are the matter of the seal, but everything which was mentioned because it was thought to be a sin, and every circumstance which was mentioned in order to make a full confession and whose manifestation would tend to injure the penitent or make confession odious, comes under the seal. And so if one who is under a vow of chastity mentions the fact in order to make a full confession of a sin of impurity, the fact that the person is under vow is protected by the seal. In the same way moral and social defects, such as scrupulosity and illegitimacy, come under the seal if they were made known with reference to confession, and if their manifestation would be to the injury of the penitent or make confession odious.

The virtues of a penitent are not the matter of the seal, nor does a confessor seem to violate his obligation if he merely says that he has heard the confession of such a one, unless on account of special circumstances it would cause injury to the penitent or make confession odious. Nor does a confessor whose watch was stolen by a penitent while making his confession break the seal by giving information of the theft to the police.

4. The seal may be broken directly or indirectly. It is broken directly when the confessor says that such a penitent told him such a sin in confession. It is broken indirectly when the confessor says or does anything or abstains from saying or doing anything from which others may come to the knowledge of confessional matter, or by which the penitent may be aggrieved or confession made odious. A confessor, then, indirectly violates the seal by changing his conduct to the detriment of the penitent in consequence of what he has heard in confession; by saying that a certain sin is rife in a place in which he has heard few confessions; by talking

with another confessor about the sins of a penitent of both of them.

It used to be a common view among theologians that ecclesiastical superiors might use knowledge gained in hearing confessions for external government, provided that in such use there was no direct or indirect revelation of confessional matter. After the decree of Clement VIII, May 26, 1593, and that of the Holy Office, November 18, 1682, this opinion has become obsolete, and now it is universally held that no knowledge gained in the confessional can be used by the priest for external government if such use aggrieves the penitent, or makes the sacrament odious, or otherwise directly or indirectly violates the seal (Can. 890).

In spite of the strictness of the seal the confessor may make use of knowledge gained in the confessional to correct his own faults, to treat his penitents and others with more kindness, to learn by experience how better to fulfil his duties as confessor, how to preach more fruitfully, but always with prudence and without giving any just cause of complaint to his penitents.

BOOK VII

EXTREME UNCTION

CHAPTER I

THE NATURE OF EXTREME UNCTION

1. THE Council of Trent defined that Extreme Unction is a true sacrament of the New Law insinuated by St Mark and promulgated and recommended to the faithful by St James when he wrote: " Is any man sick among you? Let him bring in the priests of the Church, and let them pray over him, anointing him with oil in the name of the Lord: and the prayer of faith shall save the sick man; and the Lord shall raise him up; and if he be in sins they shall be forgiven him."[1]

This sacrament, as the Council of Trent also teaches, is the complement or completion of Penance. As we have seen, Penance was specially instituted for the remission of post-baptismal sin, and its reception is necessary for all Christians who have fallen into grave sin after Baptism. Penance, then, ordinarily precedes Extreme Unction, which is properly a sacrament of the living; its primary effect is to infuse sanctifying grace into the soul for the salvation of the sick man. If any sins still remain on the soul, provided that there be at least attrition for them, they will be remitted together with the remains of sin. By the remains of sin are undertsood the temporal punishment due to them, spiritual weakness and inclination to evil, lethargy in the doing of good. The sacrament removes these wholly or in part, according to the dispositions of the recipient, and, moreover, if it be for the good of the sick person and in keeping with the providence of God, it restores him to bodily health. This last effect is not produced by miracle, but by means of natural causes; the sacrament consoles and soothes the sick person, dispels his mental anxieties, and the resultant state, with the blessing of God, sometimes brings about a recovery. In order to produce this effect with more certainty the administration of the sacrament should not be too long deferred.

[1] Jas. v 14, 15.

2. The remote matter of Extreme Unction is olive oil blessed by a bishop for the purpose, or by a priest who has received power to bless it from the Holy See (Can. 945). Ecclesiastical law requires that priests obtain the oil of the sick from their own ordinary, not from any other Bishop.

The proximate matter is the anointing with oil of the principal organs of the senses, and where the organs are double both are anointed, the right one first. In England, according to the Ritual, the eyes, ears, nostrils, mouth, hands, and feet, are anointed; but when the recipient is a woman in a public infirmary or hospital, the priest has special leave to omit the anointing of the feet if he thinks that it would excite scandal or comment. According to Canon 947, sec. 3, the anointing of the feet may be omitted for any reasonable cause.

If some sense-organ is wanting, the part of the body nearest to where it should be is anointed. Each anointing has its own special form, that for the eyes being: "By this holy anointing and through his most sweet mercy may the Lord forgive whatever sins thou hast committed through thy sight. Amen." The form for the other senses is similar. If the near approach of death will not allow of all the senses being anointed with their appropriate forms, the forehead may be anointed with the following general form: "By this holy anointing may the Lord forgive whatever sins thou hast committed. Amen."[1] As, however, Extreme Unction is only probably valid when administered with such a single anointing under one general form, if there is time it should be repeated immediately in the form prescribed by the Ritual.

[1] S.O., April 25, 1906; can. 947, sec. 1.

CHAPTER II

THE MINISTER OF EXTREME UNCTION

ONLY a bishop or a priest can validly administer this sacrament, and the only lawful minister is the bishop or priest who has the cure of souls in the place where the sick man dwells, or another priest with his express or at least reasonably presumed leave.

In the Latin Church one priest performs all the unctions, but the sacrament is valid if different priests perform the several unctions, as is done in the Greek Church. The organs should not merely be touched with the holy oil, but anointed, and the Ritual prescribes that this should be done by making the sign of the Cross on the organ with the thumb after dipping it in the oil. Care should be taken not to finish the form before both organs have been anointed when they are double, and the several anointings should be done continuously, as it is probable that all together constitute the sacrament by which grace is not given until the last anointing is finished.

The priest who has the cure of souls in the place is bound to administer this sacrament to the sick in justice in person or through another priest; in case of necessity any priest is bound to administer it out of charity (Can. 939).

CHAPTER III

THE RECIPIENT OF EXTREME UNCTION

1. In order to be able to receive Extreme Unction validly a man must be baptized, must have attained the use of reason, and must be in probable danger of death from sickness. Extreme Unction, then, may be administered to those adults who are in danger of death from disease, from the pains of childbirth, from a wound, from poison, and from old age, even though they be no longer in their right senses. It cannot be validly given to soldiers before going into battle, to criminals who are going to be executed, to imbeciles who have never had the use of reason, to children who have not yet come to the use of reason, nor to unbaptized persons.[1]

2. This sacrament may only be given once in the same sickness and in the same danger, but if the sickness be prolonged and after partial recovery the sick person again becomes dangerously ill, Extreme Unction may be repeated. According to some good authors, it may be repeated after a month's interval, for as a general rule the danger may be considered a new one after such a period of time.

No good Catholic would wish to depart this life without the help of this and the other sacraments; still there is no obligation under grave sin to receive Extreme Unction. But although the faithful who, without despising it, neglect to receive this sacrament do not thereby commit grave sin, yet a priest who has the cure of souls would sin grievously if he neglected to give those under his charge the opportunity of receiving this sacrament in their last sickness. As soon as there is probable danger of death the last sacraments may be given in the following order: Penance, Viaticum, Extreme Unction, and finally the papal blessing for the moment of death.

Canon 941 prescribes that when it is doubtful whether a sick person has attained the use of reason, whether he is really in danger of death, or whether he is dead, this sacrament should be administered conditionally.

[1] Ritual.

BOOK VIII

THE SACRAMENT OF ORDERS

CHAPTER I

THE NATURE OF ORDERS

1. THE priesthood of the New Law is not a mere office and bare ministry of preaching the Gospel: Our Lord instituted it and gave it the power of offering the sacrifice of his Body and Blood and of forgiving sins.[1] This power is conferred on priests by the sacrament of Orders, which also gives the grace to those who are rightly ordained to perform their sacred functions worthily. Those functions are various, and partly by divine institution, partly by ecclesiastical, they have been divided and assigned to separate grades of a spiritual hierarchy. The perfection of the priesthood and the whole of its powers reside in the episcopate; some portion of what bishops possess is communicated to the inferior ranks of the clergy by a special rite for each grade. Thus Orders is one sacrament, but the different ranks of the clergy participate in it in different degrees, or in other words, there are several Orders. There are three major or sacred Orders, to which by ecclesiastical law is annexed a solemn vow of chastity, and there are four minor Orders. The sacred Orders are the priesthood, the diaconate, and the subdiaconate; by the minor Orders are ordained acolytes, exorcists, lectors, and door-keepers.

It is a moot point among theologians whether all these Orders are sacraments or not; more probably only the episcopate, priesthood, and diaconate are sacraments and of immediate divine institution, the rest being of ecclesiastical institution. Those Orders which are sacraments impress a character on the soul.

The first tonsure, by which a lay person is made a cleric, is certainly of ecclesiastical institution and is not a sacrament.

2. The matter of the minor Orders is the handing to the cleric the symbols of the office to which he is ordained, and the words which accompany this act constitute the form. There is a controversy whether the handing to the subdeacon

[1] Trent, sess. xxiii, c. 1.

of an empty chalice with the paten alone, or also the giving to him of the book of epistles, is the matter of the subdiaconate, and similarly with regard to the form. It is also a matter of controversy whether the imposition of hands alone is the matter of the diaconate, priesthood, and episcopate, or the handing to the ordinand the symbols of his office, or whether both together constitute the matter. There is the same difference of opinion with regard to the form, but these questions belong to dogmatic theology.

3. In practice, the rite prescribed for ordination in the Pontifical must be observed, and if anything be omitted which even probably belongs to the essence of the sacrament, the whole must be repeated again, at least conditionally. Thus, if in the ordination of a priest the chalice with wine and the paten were not handed to the ordinand to touch while the bishop pronounced the appropriate form of words, the whole ordination would have to be repeated before one thus ordained could be allowed to say Mass. Similarly, if the imposition of hands is omitted which precedes and accompanies the prayer and preface which are said by the bishop and which contain the form, the whole rite must be repeated. On the contrary, if the third imposition of hands which accompanies the prayer, " Receive the Holy Ghost, etc.," is omitted, this portion of the rite alone need be supplied afterward, as it is certain that it only belongs to the integrity of the sacrament, not to its essence.

Although previous reception of the priesthood is more probably necessary for the valid ordination of a bishop, the inferior Orders do not seem necessary for the valid ordination to the priesthood.

Whether three co-consecrators are necessary for the validity of an episcopal consecration is disputed, but at least the Pope can give faculties to have only one consecrating bishop.

The functions of those who are in minor Orders, with the exception of exorcists, may, according to modern discipline, be exercised by laymen.

CHAPTER II

THE MINISTER OF ORDERS

1. THE ordinary minister of Orders is a bishop, who is the only valid minister of the episcopate and priesthood. A priest may receive delegated authority from the Pope to confer minor Orders, and the subdiaconate, and probably also the diaconate. Thus Abbots have power to give minor Order to their own subjects, and Cardinals, if they be priests, may give them to clerics belonging to their titular churches in Rome.

Ecclesiastical law requires that Orders be received only from one's own bishop, or from another bishop with his leave, which is granted by giving the subject dismissorial letters.

The Code bids a bishop ordain his own subjects unless he is prevented by some good reason.

One's own bishop, as far as Orders are concerned, is only the bishop of the diocese in which the ordinand has a domicile, together with origin therein, or simply a domicile without origin; but in this latter case the ordinand ought to affirm on oath his intention perpetually to remain in the diocese, unless there is question of promoting a cleric to Orders who has already been incardinated in the diocese by the first tonsure, or of promoting a student who is destined for the service of another diocese in accordance with Canon 969, sec. 2, or of promoting a professed religious, of whom there is question in Canon 964, n. 4 (Can. 956).

2. By the common law, regulars must be ordained by the bishop in whose diocese their convent is situated, but some have a special privilege of giving dismissorials to their members for ordination by any bishop who is in union with the Holy See. Whenever a bishop holds an ordination outside his own diocese he requires the leave of the bishop of the place to exercise pontifical functions.

CHAPTER III

THE SUBJECT OF ORDERS

1. To be able to receive Orders validly, the subject must be of the male sex and baptized (Can. 968). It has always been understood in the Church that women cannot receive Christian Orders. Moreover, an adult must have at least an habitual and express intention to receive ordination (unless indeed he is an imbecile and has never had the use of reason).

2. Many qualities and conditions are requisite for the lawful reception of Orders about which something must here be said; the fuller treatment of this matter belongs to canon law.

As we saw when treating of the clerical state, one who aspires to Orders must be of good life and must be called by God.

At least the Orders which are sacraments should be received in the state of grace, and Canon 1001 prescribes that before receiving the first tonsure and minor Orders the ordinand should devote at least three whole days to spiritual exercises, and before receiving sacred Orders he should devote at least six whole days to them.

In order that one may be lawfully ordained Canon 974 requires: (1) The reception of the sacrament of Confirmation; (2) moral conduct agreeably to the Order to be received; (3) the canonical age; (4) the required knowledge; (5) the reception of the lower Orders; (6) the observance of the interstices; (7) a canonical title if there is question of major Orders.

The subdiaconate may not be conferred before the completion of the twenty-first year of age, the diaconate before the completion of the twenty-second, and the priesthood before the completion of the twenty-fourth (Can. 975).

No one, whether secular or religious, is to receive the first tonsure before beginning his course of theology (Can. 976).

The subdiaconate may not be given except at the end of the third year of the course of theology, the diaconate only at the beginning of the fourth year, and the priesthood only after the middle of the fourth year (Can. 976, sec. 2).

Orders should be conferred by degrees, so that ordinations by leaps and bounds are altogether prohibited (Can. 977).

Canon 978 prescribes that the interstices are to be observed, and during them those who have been promoted should exercise themselves in the Orders received according to the directions of the bishop.

The interstices between the first tonsure and the Order of door-keepers and between the minor Orders are left to the prudent judgement of the bishop; one year should elapse between the Order of acolytes and the subdiaconate; three months between the subdiaconate and the diaconate.

Without special leave of the Roman Pontiff minor Orders may never be given with the subdiaconate or two sacred Orders on one and the same day, and any custom to the contrary is reprobated; it is also forbidden to give the first tonsure together with one of the minor Orders, or all the minor Orders at once.

A bishop must have completed his thirtieth year.

By common law sacred Orders should be conferred during Mass on the Saturdays in Ember Week, or before Passion Sunday, or before Easter Sunday. For grave reason a bishop can confer them on any Sunday or holiday of obligation.

The first tonsure may be conferred on any day and at any time; minor Orders on Sundays and on doubles, in the morning (Can. 1006).

Those who receive sacred Orders must communicate in the Mass of ordination (Can. 1005).

The Church does not wish her clergy to have to beg or to exercise some unbecoming trade in order to gain a livelihood, so she requires that to be admitted to sacred Orders a cleric must have a title, as it is called, or a certain guarantee of decent support. Various titles are recognized by ecclesiastical law, such as a benefice, pension, patrimony, poverty for religious, a common table, the Mission, and others. If a cleric already ordained loses the title of his ordination he should find another, unless in the bishop's judgement his decent support is otherwise provided for (Can. 980).

Before ordination regulars must be solemnly professed, unless they have a special privilege by which simple profession suffices.

After ordination a priest pays homage to the bishop and solemnly promises obedience to his ordinary. He undertakes no new burden by this promise; he simply binds himself anew to pay canonical obedience to the bishop in all matters subject to his authority; and a secular priest obliges himself not to leave the diocese for which he was ordained without the leave of his bishop.

BOOK IX

MARRIAGE

CHAPTER I

BETROTHAL

1. THE seventh sacrament of the Christian Church is Marriage, and because it is usually preceded by an engagement to marry, we will first treat of betrothal. Betrothal may be defined as a mutual promise of future marriage between persons who may marry lawfully.

It is a mutual promise or a bilateral contract between a man and a woman, and the conditions which are required for the validity of any bilateral contract are requisite for betrothal. There must be a serious, voluntary, and deliberate intention to enter into the agreement. Mere unmeaning flirtation, or the expression of a wish by the man that he could make the woman his wife, does not make a betrothal. Anything which destroys the voluntariness of the act will prevent it from being a valid contract. Substantial mistake about its nature or about the identity of the other party to the contract, and probably even mistake about some unessential quality in the other party, if it were the motive for entering into the contract, would make it null and void. As grave and unjustly caused fear is a diriment impediment to marriage, so, too, it prevents a valid engagement to marry.

The promise must be deliberate, made with full knowledge and advertence to the serious step which is being taken. There must be, as divines say, the deliberateness about the act which is necessary to commit a grave sin. The mutual consent of the parties must be expressed by words, writing, or other suitable sign. The acceptance by a woman of a ring from a man who has asked her to be his wife is a sufficient expression of consent and concludes the contract.

For many years past a special law has existed in Spain by virtue of which no betrothal is valid unless attested by a formal document in writing. In the year 1900 this law was extended to the whole of Spanish America, and by the decree of the Sacred Congregation of the Council, August 2, 1907, no

betrothal between Catholics or in which one of the parties is a Catholic is valid in conscience or in law or has any canonical effects unless it is contracted in writing and is signed by the parties, and also signed either by the parish priest, or by the local ordinary, or at least by two witnesses. If either of the parties or both of them are unable to write, the fact should be noted in the document, and another witness must be added who will sign the document together with the priest, or the local ordinary, or the two witnesses mentioned above. This decree binds all Catholics of the Latin rite throughout the world, and takes effect from Easter Sunday, April 19, 1908 (Can. 1017).

The term *parish priest* in this decree is used to designate not only him who is lawfully placed in charge of a canonically erected parish, but in countries where there are no canonically erected parishes the priest to whom the cure of souls in a definite district is lawfully entrusted, and who is equivalent to a parish priest, and in missions where as yet the districts are not definitely marked out all priests who in any place have the general cure of souls assigned them by the superior of the mission.

The parties must be capable of entering into a lawful marriage at any rate at the time contemplated when the engagement is made. For a promise to do something which is impossible or unlawful has no binding force, and so if at the time contemplated there will still be some diriment or prohibitory impediment between the parties, an engagement to marry is void.

A valid contract to marry at a future time when the parties will be free to do so may be entered into by those who are now hindered by some impediment. And so children under age, though incapable of marrying, may enter into a valid betrothal. According to the old canon law, even their parents might make a valid engagement for them, if they were present and did not express dissent; or, if absent, afterward ratified the contract. The decree of August 2, 1907, abolishes this rule, as also the presumption of law by which marriage attempted by children under age was presumed to be a valid engagement to marry.

Some authors applied that presumption to the case of clandestine civil marriages contracted in places subject to the decree *Tametsi* of the Council of Trent. They held that although such a marriage was null and void, yet it had the effects of a betrothal, as in the case of those under age. Leo XIII, however, by a decree dated March 17, 1879, decided

that a clandestine marriage has not the effects of a betrothal even if the parties intended that it should have.

Betrothal of children under seven is presumed to be invalid for want of the use of reason, but if it is proved that the parties to the contract had sufficient use of reason in spite of their tender age, the engagement will be valid; malice is then said to supply for the want of age.

2. Betrothal under condition, as, "I will marry you if I can earn £200 a year," is lawful, and follows *per se* the ordinary rules of conditional contracts. Such a betrothal will impose on the party who enters into it an obligation to do what he can to fulfil the condition, and when the condition is fulfilled the engagement will become valid and binding without any renewal of consent. Similarly, an engagement in this form, "I will marry you if I reach the age of twenty-one," will become a binding engagement on attaining that age. On the contrary, an engagement under an impossible condition is null and void from the commencement. And so, if two parties between whom there is a diriment impediment, which either cannot be dispensed or for which a dispensation is not usually given, enter into an engagement under the form, "I will marry you if we can get a dispensation," there will be no valid contract. It is much controverted among canonists and divines whether the same is to be said when the impediment is one for which a dispensation can be, and usually is, granted. If cousins, for example, entered into an engagement under the form, "I will marry you if I can get a dispensation," what would be the effect of such an engagement? There would, of course, be an obligation to ask for a dispensation; but if it were got, would there be a valid betrothal by virtue of the conditional engagement, or would the parties have to renew their consent? Many authors maintain that in this case there is no valid betrothal without a renewal of consent. For proof of their view they point out that the parties were not free to enter on an engagement to marry on account of the diriment impediment between them; that it is unbecoming to contract on condition that the superior grant a dispensation from the law which should be observed by all; and that when the question has been submitted to Rome the decision has uniformly been in favour of this view. On the other hand, many good authors hold that there is nothing in these reasons to prohibit us from applying to such cases the ordinary doctrine concerning conditional contracts, and so the general question remains undecided and uncertain. Both opinions are theologically probable.

CHAPTER II

THE EFFECTS OF BETROTHAL

1. As betrothal is a contract and the matter is serious, the betrothed are under a grave obligation in justice to fulfil their engagement. If a special time was agreed upon, they must keep to the appointed time, otherwise they must marry at a reasonable time after the engagement has been concluded. As grave inconveniences are likely to arise from a too prolonged betrothal, it is the duty of those who have the cure of souls to admonish those engaged that they should marry if without just cause they defer doing so too long. A delay of over a year without good reason seems excessive.

2. After betrothal the parties are under a special obligation to live chastely, and if either commit a sin of impurity with a third person the sin has a special malice on account of his violation of the fidelity which he owes to his betrothed. It is a disputed point whether the circumstance of betrothal changes the species of the sin so that mention of it must be made in confession, or whether it merely aggravates its malice. It is probable that it does not change the species of the sin, for betrothal does not, like marriage, give one party a right in the other, but gives only a right to have the other when the engagement is executed.

3. Betrothal to one prevents valid betrothal to another as long as the former tie lasts, for a promise to do what is unlawful has no binding force. If, however, in spite of betrothal to one the party marries someone else, the marriage will be valid but illicit, just as the sale of a house to one person is valid in spite of a previous promise to sell it to someone else. Betrothal, in other words, is a prohibitory, not a diriment impediment of marriage with third persons.

4. The consent of the parents of the parties is certainly not necessary for the validity of marriage. The Council of Trent teaches this.[1] Nor is it necessary *per se* for the lawfulness and the validity of betrothal, because in the choice of a state of life every man is his own master. It does not follow, however, from this doctrine, that children need not consult their parents

[1] Sess. xxiv, c. 1, de ref. Matr.

about marriage and about a partner for life. In a matter of such importance for the future happiness of the child, and because the marriage of a member of the family concerns not merely the individual, but the whole family, and especially the head of it, a dutiful child will ordinarily consult his parents before entering on an engagement to marry. If a child wishes to contract an unsuitable marriage, as if the heir of an honoured house wishes to marry an actress of doubtful reputation, the parents have a right to object to such a marriage; and if they forbid it, the son is bound to obey, and he commits sin if he goes against his parents' commands. An engagement contrary to the reasonable commands of one's parents is unlawful and therefore invalid. Mere inequality of rank between the parties of itself is not a sufficient reason why parents should forbid a marriage, but a difficulty arises when inequality of rank will be the cause of dissension and ill-feeling in the family. Even in this case a son who wishes to marry someone of inferior rank is not always bound in conscience to submit to the wishes of his parents. If he is satisfied that the woman he loves will make him a good wife, and he is not prepared to take anybody else, he is not bound to sacrifice his own happiness in deference to the wishes of his parents, especially when these originate in social prejudice rather than in a desire for the welfare of their child.

English civil law requires the consent of the father or guardian for the lawfulness of the marriage of a minor. In most of the United States of America the law is similar.

Canon 1034 bids parish priests seriously to warn minors against contracting marriage without their parents' knowledge and consent. If minors insist on doing this, parish priests should not assist at the marriage without consulting the Ordinary.

CHAPTER III

DISSOLUTION OF BETROTHAL

1. BETROTHAL, like other contracts, can be dissolved in various ways. The parties may both agree to release each other and then they will be free, for by a rule of law all things are dissolved by the same causes which gave them birth. If children under age have been betrothed, they cannot release the contract even by mutual consent until the age of puberty, and then within three days either may resile from the contract without waiting for the consent of the other party; but if they do not use this privilege granted by canon law they are presumed to ratify the contract.

2. One of the betrothed may resile if a circumstance of importance be detected or happen which if it had been known before would have prevented the contract being entered into. This rule is commonly admitted by divines, who explain it by saying that betrothal is of its nature conditional, and has such a condition as the above annexed to it. If, then, one of the parties finds that the other has an ungovernable temper, or great debts, or is given to drink, or if the other becomes afflicted with a disease like consumption or paralysis, he will be free to rescind the contract. The innocent party may resile if the other commit fornication with someone else, and certainly the man is free if he find out that the woman was corrupted even before betrothal. The same rule may be applied in favour of the woman when she finds out that the man committed fornication before betrothal, at least if in the particular case it is a sign of inconstancy or is very much resented.

Betrothal is annulled if an impediment of marriage come to exist between the parties unless it had its origin in the culpable fraud of one of them, for then he must do what he can to obtain a dispensation or at least compensate the other, as no one should reap advantage from his own fraud.

3. One who is betrothed may resile in order to enter a religious order, or to take sacred orders, or even with a view of living in the world under a perpetual vow of chastity, for in all these cases a higher life is embraced, and betrothal has also the condition annexed, " Unless afterward I am called to a higher life."

4. The Pope may for a just cause grant a dispensation from betrothal. Some authors maintained that the Pope had not the power to grant such a dispensation, inasmuch as it would violate the rights of the other party. However, if an individual is unreasonably obstinate in the maintenance of his rights, the head of the society to which he belongs should have the power of granting relief to others whom that obstinacy places in difficulties. This is what the Pope sometimes does; when a civil marriage contracted in violation of betrothal to another, though null and void in the eyes of the Church, makes it impossible for the married party to return to his former betrothed, the Pope will grant a dispensation even if the other party refuses to forego his rights.

5. When one of the parties labours under a secret defect which, if known, would furnish sufficient ground for resiling from the engagement, there is no strict obligation to make it known to the other party, unless it will be to his detriment. Past sin, then, need not be declared, but if the woman has undergone an operation which makes her incapable of bearing children, she should not contract marriage with a man who is ignorant of the defect and hopes to have children.

Whether marriage with a woman contracted in violation of a promise of marriage made to another annuls the former betrothal altogether, or whether the obligation to marry the first is only suspended and revives again if the wife die before the husband, is a disputed question among divines. Of course, such a breach of faith makes the other party free to marry someone else if she choose, and the opinion is at least probable that by such a radical change in circumstances as marriage with another the former engagement is altogether dissolved and cannot revive. There is something incongruous in the idea of a person who is married to one, being nevertheless still under the obligation to marry someone else.

6. If a man after betrothal without the knowledge or consent of his betrothed goes to live elsewhere at a distance so that personal intercourse between them is impossible, the woman may consider herself free to break off the engagement. A short absence makes no difference in the mutual obligations of the parties. If it is uncertain with what intention and for how long a time a betrothed person has absented himself, information as to his intentions should be sought by letter before breaking off the engagement. If a time was fixed for the marriage, the obligation is not extinguished by failure to keep to the time, unless it is certain that the intention of the

parties was to break off the engagement if the marriage were not contracted at the appointed time. Presents made to the betrothed in view of marriage are forfeited if the engagement is broken off through the fault of him who made the presents, otherwise, if the fault is on the other side.

If it is certain that there is good cause for breaking off an engagement, this may be done by private authority; it will only be necessary to have recourse to the ecclesiastical judge when the cause is doubtful, or when scandal would arise if the engagement were broken off by private authority on account of the cause being unknown.

When valid betrothal has been broken off by one of the parties without good reason, the other has no right of action in the ecclesiastical court to compel the defaulting party to fulfil the contract, he has only a right to an action for damages (Can. 1017, sec. 3). This action is *mixti fori* (A.A.S., x, 345).

7. People who are only engaged to be married have not the rights of married people, and if they attempt to use them they are guilty of sin against the sixth commandment. It is, however, as a rule, morally necessary for them to become acquainted with each other, and they are justified in showing to each other those marks of affection which are not wrong in themselves and which are usual in the circumstances. It is to be desired that they should not be much together alone, especially at night, and if they are left alone they should not show greater familiarity toward each other than they do when a mother or sister is with them.

CHAPTER IV

BANNS OF MARRIAGE

1. BEFORE publishing the banns of marriage the priest who has the cure of souls must have at least a general knowledge of those who wish to marry. The Ritual prescribes that he should inquire whether there is between them any impediment of kindred or affinity, or any other; whether they wish to marry freely and of their own accord; whether they be of age, and know the rudiments of the Faith so as to be able to teach it to their children (Can. 1020).

With regard to people with no fixed abode, strangers, the wives of soldiers, sailors, and others, who are said to have died in foreign parts, the Ritual admonishes the priest not to admit them readily to marriage before making all needful inquiries about them, and referring their case to the bishop, so as to have his leave for the marriage.

Canon 1021 prescribes that the parish priest demand the certificate of baptism of the parties unless they were baptized in his parish, and their reception of Confirmation, as far as possible.

2. If no impediment has been discovered by examining the parties, the priest publishes the banns in accordance with the decree of the Council of Trent.[1] "It ordains that for the future before a marriage is contracted the proper parish priest of the contracting parties shall three times announce publicly in the Church, during the solemnization of Mass, on three continuous festival days, between whom marriage is to be celebrated; after which publication of banns, if there be no lawful impediment opposed, the marriage shall be proceeded with, in the face of the Church."

The reasons for this law are: the avoidance of clandestine marriages, so that it being known who are married, there may be less danger of bigamous marriages; the discovery of impediments of marriage; and the protection of the rights of others arising from former betrothal. The banns must be published by the parish priest in the church of the parish or district where the parties have their domicile or quasi-domicile.

[1] Sess. xxiv, c. 1, de ref. Matr.; can. 1024.

If they live in different parishes, the banns must be published in both; and if either or both have lived six months in another place after the age of puberty, the parish priest should inform the bishop, who will prescribe what is to be done (Can. 1023). They must be published during the principal Mass on three successive days of obligation; but if the publication has been omitted at Mass, the omission may be made good in the evening if there be a considerable concourse of people at the evening service.

3. The very form which is commonly made use of in publishing banns shows that by them the Church intends to impose a serious obligation on all who know of any impediment between the parties who wish to marry to communicate their knowledge to the parish priest. This precept of the Church will bind even when the impediment is matter of a natural or promised secret, for such a secret cannot avail against the just commands of a superior. A professional secret binds more strictly, but it does not excuse one who knows it from doing what he can without betraying the secret to procure the removal of the impediment.

4. The obligation of publishing banns is a serious one, but for good reason the bishop or his Vicar-General may dispense with them either wholly or in part. According to approved theologians, the bishop is even obliged sometimes to dispense with banns, when charity toward his flock requires it. Thus a dispensation should be given when it is probable that otherwise the marriage will be maliciously prevented, when it is a necessary means to preserve the reputation of the parties who are thought to be man and wife already, and when the parties are obliged to depart at once to foreign countries. For lighter reasons the bishop may dispense, but he is not obliged to do so.

A parish priest has no jurisdiction in the external forum, and so he cannot dispense of his own authority from banns. In some special case, however, it might be necessary to marry the parties without delay, and then if there were no time to have recourse to the bishop, a simple priest might declare that under the circumstances the law with regard to banns ceased to be of obligation.

Sec. i. According to Canon 1031, when a doubt has arisen about the existence of an impediment between the parties—

(1) The parish priest should investigate the matter more carefully, interrogating at least two witnesses under oath, who are worthy of credence, provided that there is no question of an impediment from the knowledge of which the reputation

of the parties will suffer, and interrogating also the parties themselves if it be necessary.

(2) Let him proceed with or finish the publication of the banns if the doubt arose before they were begun or before they were finished.

(3) Let him not assist at the marriage without consulting the Ordinary if he prudently judge that the doubt still remains.

Sec. ii. When a certain impediment has been discovered—

(1) If the impediment be secret, let the parish priest proceed with and finish the banns, and without mentioning names let him report the matter to the local Ordinary or to the Sacred Penitentiary.

(2) If it is public and is discovered before the publication of the banns is begun, let the parish priest not proceed further until the impediment is removed, although he may know that a dispensation has been obtained only for the forum of conscience; if it is discovered after the first or second publication of banns, let the parish priest finish the banns and report the matter to the Ordinary.

Sec. iii. Finally, if no impediment, doubtful or certain, has been discovered, let the parish priest, after the banns are published, admit the parties to the celebration of marriage.

Canon 1030 lays it down that this should not be done until the parish priest has received all the necessary documents and three days have elapsed after the last publication of the banns, unless there be some good reason to the contrary.

Canon 1026 forbids banns to be published of a marriage which is contracted by dispensation from the impediment of mixed religion or difference of worship, unless the local Ordinary deems it proper to permit them with prudence and the removal of scandal, provided that the apostolic dispensation has been granted and no mention be made of the religion of the non-Catholic party.

The Ritual prescribes that the parties should be diligently instructed how they should live in a pious and Christian way in the state of wedlock. This is done partly in the confessional, partly outside. The parish priest may make a brief discourse to them at the end of the ceremony, or if he prefer he may read to them the instruction which is inserted in the Ritual for the purpose (Can. 1033).

Canon 1034 bids parish priests seriously to warn minors not to contract marriage without the knowledge of their parents or against their reasonable wish. In case of disobedience parish priests should not assist at the marriage without consulting the local Ordinary.

CHAPTER V

THE MARRIAGE CONTRACT

1. MARRIAGE may be defined as a contract between a man and a woman by which they give each other the right to exercise the acts requisite for the procreation of children, and bind themselves to live indissolubly together. Living in accordance with this contract constitutes the state of marriage.

The primary end of marriage is the procreation of children for the preservation and increase of the race; besides this there are also the secondary ends of mutual society and help, and a lawful outlet for concupiscence. The Fathers and councils mention a threefold good in marriage: that of children, that of mutual fidelity, and that of the sacrament, or an indissoluble and holy union, typified by the union between Christ and his Spouse the Church.

It is the teaching of the Church, defined by the Council of Trent, that marriage between baptized Christians is a sacrament, and so Christ our Lord, though he did not institute marriage, yet raised it to the dignity of a sacrament of the New Law, causing the marriage contract to be productive of grace *ex opere operato* whenever it is worthily entered into by baptized Christians. Between these the contract is the sacrament, there is no real distinction between them, and among Christians a marriage cannot be valid without being also a sacrament (Can. 1012, 1013).

2. There are certain technical terms used by theologians to designate different kinds of marriage, and it will be well to give them here.

A valid marriage between non-baptized persons is called *legitimate;* when it is perfected by the use of marital rights it becomes *consummated;* a valid marriage between Christians not yet consummated is said to be a *ratified* marriage.

A *true* marriage is one that has been validly contracted and which can be proved by suitable arguments; a *presumptive* marriage is one presumed by law; a *putative* marriage is one thought to have been validly contracted by at least one of the parties, until both parties become certain of its invalidity (Can. 1015).

A *canonical* marriage is one celebrated according to the laws of the Church; a *civil* marriage is contracted according to the laws of the State; a *secret* marriage, or a marriage of conscience, is one celebrated without banns by the bishop's leave before the parish priest and witnesses who are bound to secrecy; a *morganatic* marriage is contracted by a person of rank with one of inferior position in life on condition that she and her children are excluded from the rank of the father.

3. Marriage is rooted in human nature; it was instituted by God and raised by our Lord to the dignity of a Christian sacrament; and so of course it is honourable and its use is lawful. The marital rights, or the *debt* as St Paul calls it,[1] is the matter of the matrimonial contract, and therefore the right to use marriage is of its essence, and without it marriage cannot exist. However, marriage does not necessarily imply the exercise of the right which it gives, any more than the ownership of a house implies the use of it. Our Lady and St Joseph were really married though our Lady always remained a virgin.

Although marriage is lawful and honourable, yet all are not commanded to marry. A man may remain a bachelor if he please, and many women remain single without their having the option of being married. The Church, following St Paul, teaches that the state of celibacy, or virginity, voluntarily chosen in order to render a more whole-hearted service to God, is more perfect than the state of marriage. Our Lord himself said that there are some who refrain from marriage for the sake of the kingdom of heaven, and he added, "He that can take, let him take it." At the same time he said, "All men take not this word, but they to whom it is given."[2] And certainly for some who are strongly inclined by nature to the pleasures of the flesh, or who have fostered their passions by indulgence, the word of St Paul remains true: "It is better to marry than to be burnt."

4. The efficient cause of marriage, as of all contracts, is the consent of the parties lawfully expressed outwardly by sensible signs. That consent must be mutual, referring to the present, not to the future; it must be deliberate and voluntary, and expressed by suitable signs; not only because it is a bilateral contract, but also because it is a sacrament, which is essentially an outward sign of invisible grace.

For the validity of the contract any suitable signs by word, or writing, or nods, would suffice. The contract is valid when entered into by proxy, by letter, or by other means of com-

[1] 1 Cor. vii 3. [2] Matt. xix 11.

munication between the absent. Ordinarily, for the lawful celebration of marriage the parties must be present with each other, and all must be done in accordance with what is laid down in the Ritual and in law.

Anyone who having entered into the contract of marriage afterward asserted that he had only feigned consent would not be listened to in the external forum. In the forum of conscience he should be told that he must give a real and internal consent, as that is practically the only way to repair the injury which by his fraud he has inflicted on the other party. If such a case occurred, it would not be necessary to go through the form of marriage again; all that would be required would be for the defaulting party to make good the expression of his consent (Can. 1135).

5. Marriage should be contracted absolutely, but if in any particular case it is contracted under condition, we must distinguish various cases to see how the condition will affect its validity.

(*a*) A marriage contracted under a condition which has reference to the past or to the present and is verified, as, " I agree to marry you if you are a maid," is valid, but it will not be lawful to use marital rights until it is known whether the condition is verified or not. If the condition is not verified, the contract is invalid.

(*b*) An explicit condition against the essence of marriage which has reference to the future makes it null and void for want of true consent to marriage. Thus the conditions, " I marry you if you agree to have no offspring," or, " Until I find a more suitable partner," or, " If you will sell yourself for money," make the marriage null and void; for such conditions destroy the perpetual and exclusive right, the transference of which is of the essence of the contract of marriage.

(*c*) If nothing against the substance of marriage is expressed in the contract, but one or both of the parties intends to do something which is against the essence of marriage, such an intention will vitiate the contract or not, according as it excludes marital rights or only implies a determination to abuse them. Thus if a man intended to have two wives on a footing of perfect equality, he would be married to neither of them; but if he intended really to be married to one and was also bent on keeping a concubine, his marriage with the first would be valid. Similarly, if two were to marry with the intention of living together in virginity, the marriage would be null and void if there was no transference of marital rights; if their

intention excluded only the use of marital rights, the marriage would be valid.

The validity of marriage contracted with mutually opposed intentions will depend on which is predominant, or on which would be chosen if their mutually destructive character were known and realized. And so, if a baptized person wants to be married but does not want the sacrament of matrimony, he will be married if that is the predominant intention; he will not be married if the intention to exclude the sacrament is predominant (Can. 1092).

CHAPTER VI

THE MINISTER, MATTER, AND FORM OF MATRIMONY

1. We have seen that according to the teaching of the Church the contract of marriage was raised by our Lord to the dignity of a sacrament, so that the marriage contract constitutes the sacrament, and as such confers grace on baptized and worthy recipients to enable them to perform the duties of their state of life like true Christians. The efficient cause of the contract is the mutual consent of the parties, who thereby confect the sacrament, and who are, therefore, its ministers to each other. The remote matter would seem to be the marital rights which are the matter of the contract; the proximate matter is the mutual offer, and the form the mutual acceptance of those rights. It is uncertain whether a Christian who by dispensation marries a non-baptized person receives the sacrament or not, as the other party is certainly incapable of receiving a sacrament. It is also disputed whether the marriage of unbaptized persons who are converted to the Faith becomes a sacrament on the reception of Baptism.

2. The civil authority probably has power over the marriages of non-baptized subjects, so that it can make diriment and prohibitory impediments to such marriages for the common good. Christian marriage is a sacrament, and the administration of the sacraments belongs exclusively to the Church, so that the State has no power to make diriment or prohibitory impediments for Christian marriage. The regulations which the civil authority makes concerning marriages of soldiers and others should, of course, be observed if they are reasonable and just, but they are not impediments in the strict sense. There is nothing to prevent the State from making laws concerning the civil effects of marriage, such as the property rights of married people, rights of inheritance and succession, titles of nobility, and similar matters; these things are within the competence of the State. But questions which affect the bond of marriage and the capacity of parties to contract marriage belong exclusively to the Church, and so laws of divorce made by the civil authority are of no validity in the

forum of conscience, except in so far as they sanction and apply the laws of the Church (Can. 1016).

3. Marriage is a sacrament of the living, and should be received in the state of grace. The priest should endeavour to get the parties to go to confession and Communion when they are married, so that they may enter on their new state of life with the blessing of God. The rite in Catholic marriages should be performed in the Church, and if the wife has not received the nuptial blessing before, it is the wish of the Church that, whenever the rubrics permit, the Mass *Pro Sponso et Sponsa* should be said, and the nuptial blessing given as therein laid down. This Mass may be said on all days outside close time except on feasts of the first and second class, and on days of obligation. On these days, however, a commemoration may be made of the Mass *Pro Sponso et Sponsa* and the prayers after the *Pater* and Communion may be added.

The common law of the Church prescribes that the nuptial blessing shall not be given out of Mass, and in England, by a special indult of the Holy See, when the nuptial Mass is not said, a special blessing is given by the priest according to the Ritual.

In England the State does not acknowledge Catholic marriages unless they are celebrated in presence of a registrar and in a building registered for marriages. A priest who solemnized marriage otherwise would be liable to severe punishment as a felon. Due notice of a marriage must also be given to the superintendent registrar of the district or districts in which the parties reside. The marriage cannot take place without the registrar's certificate, which cannot be granted before the expiration of twenty-one days after the notice has been entered if the marriage is to be without *licence*, or of one day if it is to be with *licence*. These and other laws which the civil authority has imposed on Catholic marriages should be observed in order that the marriages of Catholics may be recognized by the law of the land, and to avoid greater evil. The Nonconformist Marriage Act of 1899 enabled Nonconformists to dispense with the presence of the registrar, but its onerous conditions prevented the Catholic Bishops from accepting it except in some parishes.

CHAPTER VII

THE PROPERTIES OF MARRIAGE

1. UNITY and indissolubility are the properties or peculiar qualities of marriage which we have to discuss in this chapter. Its unity consists in its being a contract in which the parties are necessarily one man and one woman. If several men have one and the same wife at the same time, we have polyandry, which is contrary to the law of nature, for it prevents the natural increase of the human race, makes domestic life almost impossible, and on account of the uncertainty of paternity renders the proper education of the children who are born very difficult. If one man has several wives at the same time, there is polygamy, which is certainly less in keeping with man's nature than monogamy. Polygamy degrades woman, destroys that equality which in regard to marriage rights should exist between the sexes, and makes it difficult for peace and harmony to reign in the family. It is certainly against the positive divine law, promulgated anew by Christ our Lord, and obligatory on all men after the preaching of the Gospel. The Council of Trent anathematized him who should say that it is lawful for Christians to have several wives and that this is not forbidden by divine law.[1]

2. Marriage is also indissoluble, at least by divine law, so that no human power can dissolve a marriage once validly contracted; "What God hath joined together let no man put asunder."[2] This text has the strictest application to the consummated marriage of baptized Christians which can only be dissolved by divine authority. The Pope can for a grave reason dispense in the ratified but not consummated marriage of a Christian; ratified marriage is also dissolved by religious profession of solemn vows; and there is the case of the Pauline privilege.

(*a*) The Pope not unfrequently uses the power given to him by our Lord to dissolve the merely ratified marriage of Catholics for some grave reason. A probable suspicion of impotence in one of the parties, and a serious quarrel which leaves no hope of reconciliation, have been held sufficient causes for granting

[1] Sess. xxiv, c. 2. [2] Matt. xix 6.

a dispensation from a ratified marriage. As the Pope has no jurisdiction over non-baptized persons, he cannot exercise his authority to dissolve their marriages. But if a non-baptized married couple were converted to the Faith, the Pope would have power to dissolve their marriage if it had not been consummated after baptism, for even if it had been consummated before baptism it would only rank as a ratified marriage. By authority of the Holy See a baptized pagan who had several wives is sometimes permitted to keep any one of them who may be converted with him, if the first is unwilling to become a Christian. Similarly, a married pagan converted in circumstances which render it impossible to interpellate the other party is sometimes allowed by papal dispensation to contract another marriage with a Catholic.

(*b*) Solemn profession in a religious order with solemn vows annuls a previously existing ratified marriage by ecclesiastical law. Mere entrance into religion and even profession of simple vows in orders that have solemn vows is not sufficient. By ecclesiastical law a period of two months is granted after marriage, during which there is no obligation to render the debt, in order that either of the parties may use his privilege of entering religion (Can. 1119).

(*c*) The consummated marriage of two pagans may be dissolved by the Pauline privilege if one of them is converted to the Faith, and the other will neither be converted nor live at peace without trying to draw the convert to sin. It is in this sense that the Church interprets the words of St Paul: "But if the unbeliever depart, let him depart. For a brother or sister is not under servitude in such cases. But God hath called us in peace."[1]

The marriage is not dissolved by the Baptism of one of the parties, but if the conditions mentioned above are verified, the convert after Baptism may contract a second marriage with a Christian, and by this marriage the former is dissolved. In order that it may be known whether the other party is willing to be converted or at least to live at peace with the convert, he must be interpellated by the bishop or by his authority. Both interpellations are required, and more probably they are necessary for the validity of the second marriage, unless a dispensation from them is obtained from the Holy See. Thus in a case of insanity of the other party, a dispensation from the interpellations was granted, and in countries where Christians were forbidden to live with Jews, only one interpellation was

[1] 1 Cor. vii 15.

put, " Whether the other party was willing to be converted to the Faith," and if a negative answer was given, the convert was free to marry again (Can. 1120 *ff.*).

3. Married people ought to live together as man and wife unless there is some good reason to the contrary.

If one of the parties commits adultery, the other has the right to separate from him altogether as to bed and board, unless he consented to the crime, or was the cause of it, or expressly or tacitly condoned it, or he himself has committed the same crime.

When an innocent spouse has separated from the adulterer by his own authority or that of a judge, he is under no obligation to admit him again to marital cohabitation; but he may admit him or recall him, unless with his consent he has adopted a life incompatible with marriage.

If a spouse has joined a non-Catholic sect, if he is educating a child as a non-Catholic, if he is leading a criminal and shameful life, if he is the cause of grave danger to the soul or body of the other, if by his cruelty he makes cohabitation too difficult for the other, these and similar causes are so many lawful reasons of separation for the other party, by the authority of the local Ordinary and also by his own authority if the causes are certain and there is danger in delay.

In all these cases when the cause of separation ceases cohabitation should be restored; but if separation was decreed by the Ordinary for a certain or uncertain time the innocent party is not obliged to cohabit unless the time fixed has elapsed or by the decree of the Ordinary (Can. 1128-1131).

4. Although questions concerning divorce and the separation of married people belong of right to the ecclesiastical court, in most modern States the civil authority claims and exercises jurisdiction in these matters. May Catholics take their marriage cases to the civil courts, and may Catholic judges and Catholic lawyers lend their aid in deciding them? No answer can be given to these questions which will apply to all countries and circumstances. In some countries Catholics can still have their rights safeguarded by recurring to the ecclesiastical courts, and there is no reason why they should carry their matrimonial suits to the civil tribunals. In England and in the United States the Church tacitly or explicitly permits Catholics to apply to the civil courts at least for a judicial separation. Before doing so they should put their case before the ecclesiastical authorities, and this is prescribed under liability to penalties by the Third Plenary Council of Baltimore.[1]

[1] N. 126; S.O., December 19, 1860.

With regard to divorce cases, Catholics in England and in the United States may have recourse to the civil courts in order to obtain a declaration of nullity when a marriage has already been declared invalid or annulled by the ecclesiastical authorities. They may not go to the civil courts in order to obtain dissolution of a valid marriage with the intention of marrying again. This is obvious from what has been said above. There is a difficulty as to whether a Catholic may petition for a divorce in the civil courts, not with the intention of considering the marriage dissolved and marrying again, but in order to obtain the civil advantages annexed to divorce, such as a change of marriage settlements or release from the obligation of supporting his wife's child by another man. The question is disputed among theologians, but as the law in English-speaking countries does not express hostility to religion and does not affect to touch the conscience but only the external relations of the citizens, the better opinion is that Catholics for good cause may petition even for divorce in the civil courts, with the intention of using only the civil advantages that follow from it. A consequence of this is that Catholic lawyers and judges may for grave reasons undertake these cases in the civil courts. For greater safety and to show their submission to the Church they should ask the leave of the Bishop.

CHAPTER VIII

THE IMPEDIMENTS OF MARRIAGE IN GENERAL

1. THE impediments of marriage are certain conditions or circumstances which prevent marriage between the persons whom they affect. Some have their origin in natural and divine law, as the impediment of previous marriage, which as long as it lasts prevents a second marriage; others have their origin in ecclesiastical law, like that of public decency. Some prevent marriage being lawfully contracted and are called prohibitory, though a marriage contracted in spite of them is valid; others are diriment impediments and where they exist prevent marriage being validly contracted; but if they arise after marriage has already been contracted they cannot make it null and void.

Diriment impediments are, in general, annulling laws which for the common good make the parties affected incapable of contracting a valid marriage, and render the act null and void if marriage is attempted in spite of them. Such laws remain in force in spite of ignorance or fear, and so as a general rule a marriage contracted in ignorance of a diriment impediment which exists between the parties is null and void in spite of the ignorance. In the same way private inconvenience does not make a diriment impediment cease to bind, but if the law cannot be observed without causing public harm and inconvenience, then it ceases to be of obligation. Thus, if illness prevents one of the parties from going to be married in the Church on the day appointed, he is not justified in contracting marriage privately at home; but if all the priests of a country are driven out, as were those of France in the Revolution, marriage may be contracted without the presence of the parish priest.

2. The impediments of natural and divine law bind all men, whether infidels or Christians, and so a marriage between parent and child is always and everywhere null and void. The civil authority more probably has power to make impediments of marriage which will bind its non-baptized subjects, but the Church alone has power to make impediments for Christians who have been baptized.[1] All baptized persons, whether

[1] Leo XIII, *Encyc. Arcanum*, February 10, 1880.

Catholics or heretics or schismatics, are subject to the diriment impediments of marriage unless they have been specially exempted from them. For all who are baptized thereby become members of the Church of Christ and subject to the jurisdiction of the divinely constituted head of that Church. The Supreme Pontiff, then, has power to bind all who are baptized by those impediments of marriage which are of ecclesiastical origin. Neither the practice of Rome nor the express declarations of the Popes afford any ground for the opinion that it is not the Church's intention to bind heretics and schismatics by the diriment impediments of marriage. Especially since the time of Benedict XIV many cases have been decided of marriage contracted between non-Catholics being declared null and void on account of some impediment of ecclesiastical origin. The general principle is clearly stated in the answer of the Sacred Congregation of the Council to the Bishop of Rosenau, August 20, 1780: "But, you say, because heretics in Hungary marry among themselves even within the prohibited degrees in virtue only of royal permission, I may well be asked what is to be said about the validity of such marriages. The answer is that unless a lawful dispensation of the Church by whose authority those impediments were introduced is obtained for them, the declaration of Benedict XIV clearly decides that those marriages are invalid. For it lays down that in Holland marriages between heretics are to be held as valid, even though the form prescribed by the Council of Trent was not observed in solemnizing them, provided that no other canonical impediment stood in the way; and this exception shows clearly that if there be any other canonical impediment, such as exists within the forbidden degrees of kindred, those marriages are not valid."

According to the common opinion, then, marriages contracted by baptized heretics and schismatics, when there is a diriment impediment of ecclesiastical origin between the parties, are invalid, though the impediment may not be recognized in the sect to which they belong. Such marriages, however, inasmuch as they are contracted in good faith, are putative, and the children are legitimate.

CHAPTER IX

THE PROHIBITORY IMPEDIMENTS

THERE are four prohibitory impediments of marriage according to modern ecclesiastical law: the prohibition of the Church, close time, betrothal, and simple vows. Something must be said on each of these.

1. The impediment called the Church's prohibition is either special or general. A special prohibition of marriage is issued by the parish priest, or the Bishop, or the Pope, when it has been found out that the proposed marriage will violate the rights of a third party, or when a well-founded suspicion arises that there is some impediment between the parties (Can. 1023, sec. 3). By a general prohibition is understood a law of the Church which forbids marriage in the circumstances but does not make it null and void if in spite of the prohibition it is contracted. Thus the Church forbids marriage without banns and mixed marriages. We have already treated of the law concerning banns, and it will be more convenient to treat of mixed marriages under the diriment impediment of disparity of worship. Clandestinity, or marriage without the presence of the parish priest and witnesses, is now a diriment impediment, to be treated of below. In Great Britain and in the greater part of the United States of America the decree *Tametsi* was never published, but clandestinity is now a diriment impediment of marriage in Great Britain and in the United States, as well as throughout the Western Church, by virtue of the decree *Ne temere*, August 2, 1907, and Canon 1094.

2. During close time, or the periods between the first Sunday of Advent and Christmas Day, and from Ash Wednesday to Easter Sunday, the solemnization of marriage is forbidden by the common law of the Church. The solemnization of marriage consists especially of the Mass *Pro Sponso et Sponsa*, the nuptial blessing, and outward pomp and feasting in connection with the marriage. A simple and private marriage without these solemnities during close time is not against the common law (Can. 1108).

3. Betrothal between two persons prevents the parties from lawfully marrying any third party unless the betrothal is legiti-

mately broken off. In other words, betrothal is a prohibitory impediment of marriage with any other person than the betrothed, as we saw above.

4. There are several simple vows which are so many prohibitory impediments of marriage (Can. 1058).

A vow of chastity hinders marriage, for he who has taken such a vow exposes himself to the danger of violating it if he marries, or of depriving the other party of his marital rights. Even after marriage has been contracted the obligation of the vow remains, unless a dispensation is obtained or the obligation of the vow is indirectly annulled by the other party.

By a vow of virginity he who takes the vow promises God that he will not commit a consummated sin against chastity. He will sin, therefore, by marrying, because he exposes himself to the danger of breaking his vow or of defrauding the other party of his rights. If by a consummated sin against chastity his virginity has been destroyed, the vow can no longer be observed, and ceases.

The same rules hold with regard to a vow of celibacy which is violated by marriage, but after marriage has been contracted no further obligation remains.

Chastity, virginity, and celibacy are loosely used one for the other, and if a case arose in the confessional the intention of the penitent would have to be inquired into in order to discover what obligation he wished to take upon himself by his vow.

One who has vowed to receive sacred orders would commit sin by marrying, for by marriage the other party obtains rights which are incompatible with the observance of the vow. Canon 987 lays down that marriage is an impediment to the reception of orders, and so the obligation of the vow will ordinarily cease as being impossible of fulfilment, though *per se* it is only suspended, and revives on the death of the other party.

Similarly, one who has taken a vow to enter religion commits sin by marrying, as he makes the observance of his vow difficult or impossible. Before consummating marriage he is still bound by his vow if it bound him to enter a religious order in the strict sense. After marriage has been consummated he may use his marital rights, and the vow usually ceases on account of impossibility of observance.

5. The power of dispensing from the impediments of an absolute and perpetual vow of perfect chastity taken after

completing the eighteenth year of age, the vow of entering religion with solemn vows, and the proof of *liber status* when it is not altogether certain, are reserved to the Holy See.

Bishops can dispense in banns and in vows that hinder marriage and are not reserved to the Pope. Regular and secular confessors have specially delegated faculties for dispensing in vows that are not reserved.

CHAPTER X

THE DIRIMENT IMPEDIMENTS

ARTICLE I

Impotence

1. IMPOTENCE is the incapacity to have carnal intercourse such as is required for the procreation of children. It is *absolute* if the incapacity extends to all persons of the other sex, otherwise it is *relative*. *Temporary* impotence exists only for a time, and may be cured by lapse of time or by some lawful operation which does not endanger life; *perpetual* impotence lasts for life. It is *antecedent* if it precedes marriage, otherwise it is *subsequent*.

2. Antecedent and perpetual impotence annuls marriage by the law of nature, for the matter of the marriage contract is in that case impossible. This is true whether the impotence be absolute or only relative, but in the former case marriage is out of the question, while in the latter a valid marriage may be contracted with someone else, though it is impossible with a person with respect to whom the party is impotent. Subsequent impotence, which has supervened on marriage, cannot, of course, annul the marriage already contracted, but if it is altogether certain it makes the use of marriage unlawful (Can. 1068).

This, however, is not to be lightly presumed, for the right is in possession, and for its lawful exercise it suffices if there be any probability of its not being impossible.

Neither does antecedent but temporary impotence annul marriage, for a contract is valid if the matter is possible or by using ordinary means can be made possible.

When it is doubtful whether a spouse is impotent or not the decision must be in favour of the validity of the marriage, and since all such questions belong to the *forum externum*, they fall under the cognizance of the bishop, nor can they be settled by the confessor.

3. Mere barrenness or sterility is not impotence, nor does it make marriage impossible or unlawful. There is a controversy among experts as to whether removal of the ovaries

or of the womb or of both organs makes a woman impotent or only sterile. The decisions which have been given by the Roman Congregations in particular cases are quoted in defence of both opinions, and as yet no general solution of the question has been given. Until this happens, a woman who has undergone such operations should not marry without consulting the bishop, but if she is already married the more favourable opinion should be followed. This impediment is recognzied by English law.

Article II

Age

Males under sixteen years of age and females under fourteen are presumed not to have that maturity of judgement which is requisite for entering the married state. The Church has made them incapable of marrying by requiring the age of sixteen complete in males and fourteen complete in females for the validity of marriage (Can. 1067). The age of puberty varies according to race and climate; in northern latitudes it is not reached till the age of about fifteen in girls and seventeen or eighteen in boys. Even though the parties may not yet be capable of having children, they may marry validly if they are of the age required by the Church, though it is desirable not to marry before full maturity. Those who are not baptized are not subject to the ecclesiastical impediment of age, but in this matter English law agrees with the old canon law, which fixed the age of valid marriage at fourteen and twelve respectively.

Article III

Previous Marriage

1. One who is already married cannot validly contract a second marriage unless the former bond is dissolved by one of the means described above, or by the death of the other spouse. Previous marriage, then, is a diriment impediment of a second marriage as long as it subsists, by the law of nature and by positive divine law. This impediment, therefore, binds all men, whether Christian or heathen.

It is not lawful for one who has been married before to contract a second marriage, unless there is certain proof that the first marriage has been dissolved by lawful authority or by the death of the former spouse (Can. 1069).

If the decease is proved by a certificate of death or some similar authentic document, or by two witnesses who are above suspicion, or by any other legitimate means, the parish priest may allow the second marriage. If, however, there is no certain proof to be had, and it is doubtful whether the party in question is free to marry, the case must be referred to the bishop, who will investigate the circumstances, and if any prudent doubt remain he will not allow the second marriage without consulting the Holy See. Sometimes in special circumstances the Pope allows a second marriage, even when strict proof of the death of the former spouse is not obtainable, as he did in the case of the wives of the Italian soldiers who perished in the battle of Adoua.[1]

2. If a person has unlawfully contracted a second marriage without the necessary certainty concerning the death of a former spouse, it does not follow that the second marriage is invalid, and that the parties must separate. If there is only slight doubt about the death of the former spouse, after making fruitless inquiries, the parties may live together as man and wife. If only one of the parties is in bad faith and is not certain of the death of a former spouse, while the other knows nothing of the difficulty, he should render the marriage debt, but he has no right to ask it as long as he remains in bad faith. If both parties are in bad faith, they cannot lawfully use marriage as long as they are in that state. Inquiries should be made, and if probable reasons can be discovered for thinking that the former partner is dead, they may use marriage, according to a probable opinion. For even in this case the marriage has been contracted, it is probably valid, and it is not certain that anyone else has a prior right, so the parties should be allowed to use it. If the second marriage was contracted in good faith, and a doubt about the death of a former spouse arises subsequently, inquiries should be made, and if they are fruitless the parties may live as man and wife. Of course, in all cases when it is found out for certain that a former spouse is alive, the second marriage is invalid, and the parties must separate, or at any rate must not live as man and wife together.

English law enforces this impediment, but if a former spouse has not been heard of for seven years or more, it will not punish the other party as guilty of bigamy if he marries a second time, although he must separate if the former spouse appear subsequently.

[1] S.O., July 20, 1898.

Article IV

Consanguinity

1. Consanguinity is the bond of relationship by blood existing between those who are descended by carnal generation from one and the same near stock. The relationship, therefore, arises from community of blood derived from a common and not too remote ancestor. That common ancestor is called the *stock;* the distance in descent between one person and the other is called the *degree* of relationship; and the series of persons who descend from the same stock is called the *line*, which is *direct* if they descend from one another, otherwise it is *collateral.* The degrees are equal in the collateral line if the persons are equally distant from the common stock; otherwise they are unequal.

It is immaterial whether both parents of the common stock are the same or only one, and whether the birth be legitimate or not.

The method of computing the degrees differs somewhat in canon law from that adopted by modern English civil law, which here follows the Roman civil law. The following are the rules for reckoning the degree of relationship according to canon law, which is followed in moral theology:

(*a*) To find the degree of relationship in the direct line, count the persons, leaving out the common stock.

(*b*) In the collateral line, when the degrees are equal, count the persons in one of the lines of descent, leaving out the common stock.

(*c*) When the degrees are unequal, count the longer line, leaving out the common stock in the same way, and add the number of persons in the shorter line. Thus, an uncle and niece are related in the second degree, touching the first, or mixed with the first (Can. 96).

According to the English method of computation, which is also followed in most States of the Union, all the persons are counted both in the direct and collateral lines, leaving out the common stock. According to this method, an uncle and niece are in the third degree.

Consanguinity in the first degree of the direct line annuls marriage by the natural law; and in further degrees indefinitely, but more probably only by ecclesiastical law. In the collateral line it is disputed whether consanguinity in the first degree

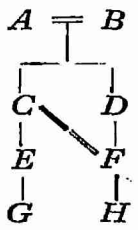
annuls marriage by the law of nature or not; it certainly does so to the third degree by ecclesiastical law.[1]

This impediment, therefore, is partly of natural, partly of ecclesiastical law, and although in the more remote degrees of both the direct and collateral line it does not bind those who are not baptized, yet even among them there is a natural bond in blood relationship which after Baptism becomes a diriment impediment of marriage within the prohibited degrees. One who is baptized is subject to the laws of the Church, and cannot, without the necessary dispensation, marry a relation within the forbidden degrees, even if the latter is not baptized.

English law follows in this matter that of Leviticus, and according to its method of computation consanguinity is a diriment impediment of marriage to the third degree inclusive, but not beyond. Thus an uncle cannot marry a niece, but two cousins may marry, by English law.

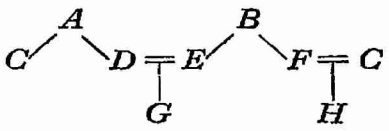
2. The impediment of consanguinity may be multiple from various causes, but it is only multiplied as often as the common stock is multiplied (Can. 1076, sec. 2).

(*a*) If two near relations marry, their offspring will be related in several different ways:



In this scheme *G* and *H* are descended from the common stock *C=F*, and so they are in the second degree mixed with the first in the collateral line. Both *G* and *H* are also descended from *A=B* through *C* and through *F*. On this account they are in the third degree of relationship. Thus there is a double relationship between them, and if a dispensation were required for *G* to marry *H*, mention should be made of this fact.

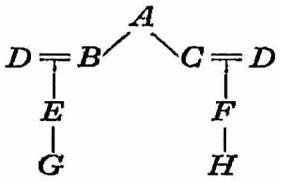
(*b*) Similar results will follow if two relatives marry two relatives:



[1] Council of Lat. 4 (1215); can. 1076.

In this scheme *G* and *H* are descended from both *A* and *B*, and they are in double second degree of relationship.

(*c*) Similarly, if one man successively marries two who are related to each other:



G and *H* are in the second degree from the common stock *D*, and in the third from the common stock *A*. *D* is supposed to marry his deceased wife's sister.

Article V

Affinity

1. Affinity is the relationship which one contracts with the relatives by blood of a person with whom he has contracted a ratified marriage only or a ratified and consummated marriage (Can. 97, sec. 1).

It has its origin in positive ecclesiastical law with regard to the collateral line and more probably also in the direct line. Affinity annuls marriage in the direct line in every degree, in the collateral line to the second degree inclusively (Can. 1077). The degrees in affinity with the husband are the same as the degrees of consanguinity with the wife and *vice versa*.

2. As this impediment is of ecclesiastical origin, the Church can dispense from it, but she does not dispense in affinity in the first degree in the direct line.

The impediment of affinity is multiplied as often as the impediment of consanguinity from which it proceeds is multiplied, and by marriage with a relative of a dead spouse (Can. 1077, sec. 2).

Affinity, however, does not generate affinity, so that two brothers may marry two sisters, and a father and son may marry a mother and daughter.

English law only acknowledges affinity arising between those who are married, and it extends only to the same degrees, computed in the same way, as does consanguinity.

Article VI

Spiritual Relationship

1. Spiritual relationship arises by ecclesiastical law from the administration of Baptism and Confirmation, but only that which arises from Baptism is a diriment impediment of marriage (Can. 1079). According to modern discipline, it annuls marriage between the minister of the sacrament and the recipient, and also between the sponsors and the recipient. As it has its origin in ecclesiastical law, it does not affect those who are not baptized, and the impediment is doubtful and consequently non-existent when Baptism is doubtful or only probable. The impediment, as far as it affects sponsors, does not arise if Baptism was administered privately without sponsors and afterward the ceremonies with sponsors are supplied in the Church.

Article VII

Adoption

By adoption a person becomes in law the child of another, though he is not such by nature. Legal adoption, according to Roman law, was a diriment impediment of marriage between certain parties, and in this matter the civil law was *canonized* by the law of the Church.

(*a*) It annulled marriage between the adopter and the adopted and those descendants of the latter who were under his authority at the time of the adoption.

(*b*) It annulled marriage between the adopted and the children of the adopter as long as they were under his authority.

(*c*) Finally, it annulled marriage between the adopter and the widow of the adopted, and between the adopted and the widow of the adopter.

Roman law, as such, is nowhere in force at present, and the Code has made new provisions for the circumstances.

Canon 1059 prescribes that in those countries where by the civil law legal relationship arising from adoption makes marriage unlawful, marriage is also unlawful by canon law. Moreover, Canon 1080 prescribes that those who are held incapable of marrying each other by the civil law on account of legal relationship arising from adoption, cannot validly contract marriage and this by force of canon law.

In England adoption exists as a private contract between

the parties, but it is not otherwise recognized by law, and so in England there is no room for the impediment of marriage arising from legal adoption. In most of the States of the Union there seems to be a form of adoption recognized by law sufficient to make it the basis of the ecclesiastical impediment.[1]

Article VIII

Public Propriety

Before the issue of the new Code the impediment of public propriety arose by ecclesiastical law from valid and certain betrothal, and from ratified, not consummated, marriage.

The Code has made a great change in this impediment. According to Canon 1078, the impediment of public propriety arises from invalid marriage, whether consummated or not, and from public and notorious concubinage; and it annuls marriage in the first and second degree of the direct line between the man and the relations by blood of the woman and *vice versa*. Merely civil marriage by itself will not produce this impediment since it produces no canonical effects. But the impediment of public propriety will arise from the public and notorious concubinage which will be associated with merely civil marriage.

Article IX

Solemn Vows and Sacred Orders

1. A solemn vow of chastity, taken in a religious order, strictly so called, or taken implicitly when sacred Orders are received in the Latin Church, is a diriment impediment of marriage by ecclesiastical law. This has long been the practice of the Western Church, and it was solemnly enunciated by the Council of Trent: " If anyone saith that clerics constituted in sacred Orders, or regulars who have solemnly professed chastity, are able to contract marriage, and that being contracted it is valid, notwithstanding the ecclesiastical law or vow; and that the contrary is nothing else than to condemn marriage; and that all who do not feel that they have the gift of chastity, even though they have made a vow thereof, may contract marriage; let him be anathema: seeing that God refuses not

[1] Smith, *Marriage Process*, n. 263.

that gift to those who ask for it rightly, neither does he suffer us to be tempted above that which we are able."[1]

In the Eastern Church marriage may be contracted before receiving sacred Orders, and those who have married may use their marital rights after receiving sacred Orders, but sacred Orders are a bar to contracting a new marriage. This shows that sacred Orders, apart from the vow, which in the Latin Church is taken when they are received, are a diriment impediment of marriage. By a special privilege, the simple vow of chastity taken by members of the Society of Jesus at their first profession is also a diriment impediment of marriage.

2. As this impediment owes its origin to ecclesiastical law, the Church can dispense in it, but she seldom does so except for grave reasons which concern the public weal. Leo XIII granted bishops the faculty of dispensing, by themselves or through some trusty ecclesiastic, the sick who are in great danger of death so that there is not time to have recourse to the Holy See, from all, even public, impediments which annul marriage by ecclesiastical law, except the priesthood and affinity in the direct line arising out of the lawful use of marriage.[2] This was confirmed and extended by Canons 1043, 1044.

Article X

Difference of Religion

When a man and woman marry, they enter upon the closest possible union for mutual help and for the rearing and education of a family. Religion should be at the base of that union, and should furnish the fundamental principles for the education of their offspring. This, however, is hardly possible if husband and wife profess different religions, so that the very nature of marriage excludes difference of religion in husband and wife. If both the parties are baptized Christians, but only one is a Catholic, difference of religion is only a prohibitory impediment; if one of the parties is not baptized, and the other has been baptized in the Catholic Church or has been converted to it, it constitutes a diriment impediment. The first is commonly called a mixed marriage, and we will devote to it the following section.

[1] Sess. xxiv, c. 9; can. 1072, 1073.
[2] S.O., February 20, 1888.

Section I

Mixed Marriages

1. Mixed marriages are forbidden by the natural, divine, and ecclesiastical law. For the parties are ministers to each other of the sacrament of Marriage; but it is unlawful for a Catholic without grave necessity to communicate in religious rites with a non-Catholic, and to receive a sacrament from him. Besides, it usually happens that in marrying a non-Catholic the Catholic party exposes himself to the danger of either losing his faith altogether, or at least of suffering its purity and brightness to be tarnished. The Church has forbidden mixed marriages from the earliest ages, and the Popes and bishops have issued innumerable instructions and warnings against them. It is without doubt a grave sin to contract a mixed marriage without a dispensation, and the Church shows her detestation of it by prohibiting any religious function at the marriage, even when a dispensation for it has been obtained (Can. 1060, 1102).

2. However, in countries where Catholics and non-Catholics live together, and especially if the latter greatly outnumber the former, as they do in Great Britain and in the United States, it is almost impossible to avoid mixed marriages sometimes, and the Holy See grants the necessary dispensation. Certain conditions must be fulfilled before the dispensation for a mixed marriage is granted. In the first place, there must be a grave canonical cause, or a good reason such as the Church recognizes to be sufficient for a dispensation in this matter. In order to remove as far as possible the danger connected with mixed marriages, the Church requires that the non-Catholic party shall promise to leave the Catholic the free exercise of his religion, and that both parties promise to bring up all the children in the Catholic faith. Moreover, the Catholic party must undertake to do his best to bring about the conversion of his spouse to the Catholic religion. The necessity of these promises is founded in the natural and divine law, and the common law of the Church requires that there should be moral certainty that they will be fulfilled and that as a rule they should be in writing (Can. 1061).

If one of the parties be a baptized Catholic, but one who has given up the practice of his religion without going over to any heretical sect, there is no strict impediment to his marrying a Catholic, but of course efforts should be made for

his conversion, and if he remain indifferent the bishop should be consulted (Can. 1066).

In England, when a dispensation has been obtained for a mixed marriage, the bishops allow the priest to assist at it at the altar rails vested in surplice and stole.

The banns should not be published unless the local Ordinary judge that they may be permitted, taking the necessary precautions to avoid scandal, and omitting all mention of the difference of religion (Can. 1026).

A sermon before or after the function is not prohibited. Mass, however, should never be said nor the nuptial blessing given at a mixed marriage.

The Church does not allow the Catholic party to go through any marriage rite before a non-Catholic minister acting as such. If the non-Catholic minister acts as a civil magistrate, and Catholics are obliged to go through the marriage ceremony in his presence in order to have their marriages recognized by the State, it is permitted (Can. 1063).

Section II

Difference of Religion

According to Canon 1070, sec. 1, marriage contracted by a person not baptized with a person baptized in the Catholic Church or converted to the same from heresy or schism is null.

Sec. 2. If one party at the time of contracting marriage was commonly regarded as a baptized person, or if his baptism was doubtful, in accordance with the rule of law that doubtful marriage is to be deemed valid until the contrary be proved, such marriages are to be held valid until it is proved for certain that one of the parties was baptized and the other was not baptized.

Such a marriage, as is clear from St Paul,[1] has been unlawful from apostolic times, but in the first centuries of the Christian era it was not invalid, and there are several well-known instances of saints being married to pagans. Gradually, however, a marriage between a baptized Christian and a pagan came to be looked upon as invalid, unless contracted in virtue of the Church's dispensation, and this has been the settled rule from about the beginning of the twelfth century. As the impediment is of positive law it can, of course, for grave reason be dispensed with, and then even the apostolic prohibition will cease

[1] 2 Cor. vi 14.

if the dangers which are common to mixed marriages and to difference of religion can be avoided.

Before the new Code came into force the impediment of difference of religion affected baptized non-Catholics as well as Catholics. By the common consent of commentators the effect of Section 1 is to restrict the impediment to those who have been baptized in the Catholic Church or converted to it from heresy or schism. Those are baptized in the Catholic Church who are baptized with the intention of incorporating them as members into the bodily communion of the Catholic Church. So that an infant who in danger of death was secretly baptized to procure its eternal salvation only, would not be baptized in the Catholic Church in the sense of this Canon.

Article XI

Crime

By ecclesiastical law certain crimes committed by married people which are specially opposed to the sanctity of marriage constitute a diriment impediment of a second marriage. These crimes are: adultery together with a promise of marriage or attempted marriage with the adulterer, murder of a spouse with the machination of the other party, adultery and murder of a spouse. In order that these crimes may constitute a diriment impediment of another marriage, certain conditions explicitly or implicitly contained in canon law must be fulfilled. These will be described in the following sections (Can. 1075).

Section I

Adultery with Promise of Marriage

1. When husband or wife commits adultery with a third person and promises to marry that person after the death of the other spouse, the Church makes the adulterers incapable of contracting a valid marriage even after the first has been dissolved by death. The aim of the Church is to protect married people, to guard the sanctity of marriage, and to punish crime. A law, however, which restricts the liberty of marriage must be strictly interpreted, and so Doctors require the following conditions in the adultery and in the promise in order that the impediment may arise:

(*a*) The adultery must be real, formal on both sides, and complete. It must be real, or one at least of the parties must

be united in a true, valid marriage. That fact must be known to both the adulterers, or else they are not guilty of formal but merely material adultery. If each party knows that the other is married and the other conditions are verified, there will be a double impediment between them. The adultery must be complete, so that it would be possible for it to produce its natural result in offspring.

(*b*) The promise, too, must be real, not fictitious, accepted by the promisee, absolute, not conditional, made with knowledge of the present marriage, and undertaking to contract marriage after the death of the other spouse. For one of the objects of the law is to remove the temptation to plot against the life of husband or wife.

Both the adultery and the promise must have place during the continuance of the same marriage, but it is immaterial whether the promise be made before, after, or at the same time as the adultery is committed.

2. This impediment of crime also exists between parties who have committed adultery with each other and attempted to marry during the lifetime of the spouse of one of them. The adultery must have the same qualities as in the preceding case, and the marriage must be really and truly attempted, not merely feigned. It is immaterial whether the attempted marriage precede or succeed the adultery. It is obvious that those will lie under this impediment who, after a civil divorce from a spouse, marry again and consummate the attempted marriage.

SECTION II

Murder of a Consort

Murder by a man and a woman of the spouse of one of them constitutes a diriment impediment to their marriage. This impediment does not arise unless death really ensues; attempted murder is not sufficient. Moreover, the murder must be committed not by one of them alone, even if the other afterward approve of it, but by both, either by mutual physical help, or by moral persuasion of some sort. Death must also be inflicted with the intention of marrying the other when free, as Doctors gather from the end of the law, which is to prevent murder of a consort with a view to marrying someone else. This intention must at least be manifested in some way to the other party, though it is not necessary that it should openly actuate both of them to the perpetration of the crime.

Section III

Adultery and Murder

1. When a man and a woman commit adultery and one of them murders his consort in order to marry his accomplice in adultery, the third impediment of crime arises between them and hinders the marriage. In this case there need be no promise of future marriage, nor any attempt at marriage, nor need the death be the result of the plotting of both of the parties. It will be sufficient if the adultery have the qualifications mentioned above in the first section, and murder really be committed with the intention of marriage manifested in some way, as by presents or by love letters to the other party.

2. If to adultery and murder as just described there be joined the promise of future marriage, and the plotting of the death of the consort of one of the parties with the conditions laid down in the previous sections, there will be not one but three impediments, and if marriage were actually attempted during the murdered consort's life, there will be four. The impediment is purely of ecclesiastical law, and therefore it does not bind those who are not baptized. If, however, one of the parties is baptized, it will indirectly affect the other.

3. Since the issue of the new Code ignorance of this impediment is no reason why it should not be incurred (Can. 16).

Article XII

Error, Slavery, Imbecility

1. By error is understood a mistaken judgement by which one person or thing is taken for another. It differs from ignorance, which is merely the absence of knowledge. Error, if it is substantial, annuls marriage as it does other contracts, by the law of nature itself. For a contract is not valid unless there be an agreement of wills between the contracting parties, and there cannot be that agreement if one of the parties is in error about the substance of the contract. There will be such a substantial error when there is a mistake about the person with whom marriage is contracted. If *A* thinks he is marrying *B* and intends to marry *B*, the marriage will be invalid if the other party to the contract is *C*, not *B*. Sometimes a mistake about the quality or rank of the other party may be substantial and invalidate the marriage. Thus, if a

woman thinks she is marrying the eldest son of a peer, and only intends to marry the eldest son, who she thinks is present, the marriage will be null and void if the bridegroom is not the eldest son of a peer. Ordinarily, however, a mistake about the quality or condition of the other party will not be substantial, and will not invalidate the contract. If the lady intends to marry the person present who she wrongly thinks is the eldest son, the marriage will be valid. It is possible that there should be a substantial mistake about the subject-matter of the contract of marriage. Thus, if a woman thinks that marriage is a mere union of friendship between the parties, and when she marries does not intend to give her husband any right to have children by her, the marriage is invalid. Mere ignorance as to the way in which children are brought into the world does not invalidate marriage (Can. 1083, 1082).

2. If a freeman married a slave under the mistaken belief that she was free, the marriage was null and void by ecclesiastical law; if he married knowing the servile condition of the other party, the marriage was valid. To this extent the Church received the Roman legislation on the marriage of slaves, according to which they could not validly marry one that was free, and their marriages among themselves were merely at the good will of their masters. The law of the Church corrected what was inhuman in the Roman civil law, and adopted its provisions as far as they were in harmony with Christian principles. Nowadays, of course, this impediment can scarcely be of practical importance in any part of the world (Can. 1083, sec. 2, ii).

3. Imbeciles who have not the use of reason are incapable by the law of nature of contracting a valid marriage, unless it is contracted in a lucid interval. If the loss of reason supervenes on marriage which has been validly contracted already, it cannot of course annul the marriage.

Article XIII

Violence and Fear

1. Violence is the onset of force too great to be resisted, and fear is a perturbation of mind arising from present or future danger. Here we treat of fear caused by extrinsic violence, inasmuch as it is a diriment impediment of marriage.

When marriage is contracted through grave fear, caused unjustly by a free agent with a view to extorting marriage, ecclesiastical law makes it null and void. Whether such

a marriage is invalid by natural law is a moot point among Doctors. Fear may, indeed, sometimes be so excessive that it takes away the use of reason, so that a man under its influence does not know what he is doing. If a man married under the influence of such terror, the marriage would of course be invalid for want of consent. But commonly even grave fear does not produce such effects; a man in danger of shipwreck or death knows as a rule what he is doing, and if he marries in such circumstances, though induced by fear to do so, the marriage will be valid. But when he is unjustly forced by someone to marry against his will, the injury done to him is a sufficient reason for the Church to make the marriage null and void, even though he knew what he was doing and consented to the marriage. The only difference between this case and the former lies in the injury inflicted by the fear caused by a free agent. This however, does not seem sufficient ground for asserting the nullity of the contract by natural law, though it affords a just reason why positive law should make it invalid. The better opinion, then, seems to be that grave fear is a diriment impediment of marriage by ecclesiastical law when the fear is caused unjustly by someone with a view to compelling the party to marry against his will. Hence, if one who had violated a woman was threatened with a beating and married her in order to escape it, the marriage would be valid. Fear arising from reverence for parents and superiors is in general not sufficiently serious to make marriage contracted under its influence null and void. In certain circumstances, however, such a fear may become grave and sufficient to annul marriage. Much depends on the character of the party who was influenced by fear and on the means employed to compel acquiescence to the wishes of harsh and severe parents or guardians. The question as to whether in any particular case there was grave fear is a question of fact to be determined by the ecclesiastical judge after weighing all the circumstances of the case (Can. 1087).

2. Although marriage has been contracted under the influence of grave fear sufficient to render it invalid, the marriage may afterward become valid if fear disappears, and the party who was under its influence freely cohabits with the other and expresses matrimonial consent. In this case it will not be necessary to repeat the external solemnization of the marriage unless the impediment was publicly known. It will be sufficient if the parties manifest their consent to be man and wife privately when freed from the influence of grave fear.

As may be gathered from what has already been said, slight fear, such as any ordinarily constituted person can despise, does not invalidate marriage, even when it is caused unjustly with a view to extort marriage.

Article XIV

Abduction

The Council of Trent[1] made the following law: " The Holy Synod ordains that no marriage can subsist between the abductor and her who is abducted so long as she shall remain in the power of the abductor. But if she that has been abducted, being separated from the abductor and being in a safe and free place, shall consent to have him for her husband, the abductor may have her for his wife." This decree made abduction a diriment impediment of marriage, and in keeping with its tenor the impediment may be defined as the violent abduction of a woman from a place of safety to another place where she is detained in the power of the abductor for the purpose of marriage. In order to constitute the impediment the abduction must be against the will of the woman, whether it be effected by open violence, or threats, or fraud; for if she freely consent both to the abduction and to marriage, we have elopement, not abduction. Consent to both abduction and marriage is required, for the Council made an abducted woman incapable of contracting a valid marriage, as long as she is in the power of the abductor. The woman, too, must be the abducted party; if a man were forcibly carried off by the orders of a woman who wished to marry him, this impediment would not arise. It is a disputed point among Doctors as to whether the impediment would arise if a man carried off his betrothed by violence in order to marry her. The better opinion is that the impediment would hinder the marriage, for although betrothal gave the man a right to marry the woman at the proper time, still it gave him no right to use violence for the purpose.

The words in the definition " from a place of safety" signify a place where the woman is not in the power of the abductor, so that to give rise to the impediment the woman must be taken from one place to another which is morally distinct, and where she is under the control of the abductor. The forcible detention of a woman in a place where she is in the man's

[1] Sess. xxiv, c. 6, de ref. Matr.

power but to which she came of her own accord is equivalent to abduction (Can. 1074, sec. 3). The abductor's aim must be to contract marriage, not merely to satisfy his lust.

The impediment is of ecclesiastical law and lasts as long as the person abducted remains in the power of the abductor, for, as the Council says, if the woman be restored to her liberty and then freely chooses to have the abductor for her husband, the impediment ceases (Can. 1074, sec. 2).

The Council imposed the penalty of excommunication on the abductor and on all who aid and abet him, besides obliging him to give the woman a sufficient dower whether he marry her or not. Other penalties are assigned by Canon 2353.

Article XV

Clandestinity

1. A clandestine marriage is one that is contracted without the solemnities which are prescribed by the Church, so that a civil marriage before the registrar, a marriage in private, and a marriage before a priest not duly authorized to assist at it, are all clandestine marriages. Such a marriage always was and is gravely sinful, because it is forbidden by the Church on account of the great evils which frequently are the consequence, and because marriage is a sacrament and it should be received with fitting solemnity in the Church. Moreover, the Council of Trent by the decree *Tametsi*[1] made clandestine marriages invalid in all places where the decree has been published according to the directions therein laid down. These will be best set forth in the words of the Council itself. The Council says:

"And that these so wholesome injunctions may not be unknown to any, it enjoins on all ordinaries that they as soon as possible make it their care that this decree be published and explained to the people in every parish church of their respective dioceses; and that this be done as often as may be during the first year, and afterwards as often as they shall judge it expedient. It ordains, moreover, that this decree shall begin to be in force in each parish at the expiration of thirty days, to be counted from the day of its first publication made in the said parish."

This decree was duly published in the parishes of Catholic countries like Italy, France, and Spain, and consequently in

[1] Sess. xxiv, c. 1, de ref. Matr.

those countries it bound all baptized persons, Protestant as well as Catholic. In Protestant countries like England, Scotland, and Norway it was not published at all, and bound neither Catholics nor Protestants. In countries like Ireland and Holland it bound Catholics but not Protestants. In these latter countries mixed marriages were declared to be exempt from the decree. This varying discipline led to inextricable confusion, and more marriages were invalid on account of clandestinity than from any other cause. To remedy these evils the Sacred Congregation of the Council issued its decree *Ne temere* on August 2, 1907, and it began to have the force of law for Catholics in the Western Church on Easter Sunday, April 19, 1908. With a few changes the Code has adopted the provisions of the *Ne temere* decree, and so now the impediment of clandestinity may be described as follows:

Only those marriages are valid which are contracted before the parish priest of the place or the local Ordinary or a priest delegated by either of them and at least two witnesses.

The parish priest and the Ordinary of the place validly assist at a marriage:

(*a*) Only from the day of taking canonical possession of their benefice or entering upon their office, unless by sentence they have been excommunicated, interdicted, or suspended from office, or declared to be such.

(*b*) Only within the limits of their territory; and within the limits of their territory they assist validly not only at the marriages of their subjects, but also of such as are not their subjects.

(*c*) Provided that not being compelled by violence or grave fear they demand and receive the consent of the contracting parties.

The parish priest and the local Ordinary who can validly assist at a marriage can also grant leave to another priest so that within the limits of their own territory he may validly assist at the marriage (Can. 1094, 1095).

This leave to assist at a marriage ought to be given expressly to a particular priest for a particular marriage, otherwise it is invalid; so that all general delegations are excluded, unless there is question of curates (*vicarii cooperatores*) for the parish which they serve.

The parish priest or the local Ordinary should not grant this leave unless everything has been done which the law requires for the proof of the freedom of the parties to marry (Can. 1096).

Moreover, the parish priest or the local Ordinary assist lawfully at a marriage:

(*a*) When they are satisfied according to law as to the freedom of the parties to marry.

(*b*) When, moreover, they are satisfied as to the domicile or quasi-domicile or of a month's stay, or, if there is question of a homeless person, of the actual staying of one of the contracting parties in the place of marriage.

(*c*) If the conditions just mentioned be wanting, the priest must have the leave of the parish priest or of the local Ordinary of the domicile or quasi-domicile or month's stay of one of the contracting parties, unless there is question of homeless persons who are moving about and staying nowhere, or there is a grave necessity which excuses from asking leave.

In all cases let it be the rule that marriage be celebrated before the parish priest of the bride unless there be some good reason to the contrary.

A parish priest who assists at a marriage without the required leave has no right to the stole fee, and he should send it to the proper parish priest of the contracting parties (Can. 1097).

If a parish priest or a local Ordinary or a priest delegated by one of them cannot be had or approached without serious inconvenience to assist at marriage:

(*a*) In danger of death marriage contracted before witnesses alone is valid and lawful; and also at other times provided that a prudent judgement be formed that the same state of things will last for a month.

(*b*) In both cases if there is another priest who can assist he ought to be called and assist at the marriage, but if this is not done the marriage before witnesses alone is valid (Can. 1098).

All who have been baptized in the Catholic Church are bound to observe this form of marriage, as well as all converts to it from heresy or schism; even though they afterwards fall away from it. All these are bound to observe the form laid down even when they contract marriage with non-Catholics, or with Catholics of the Oriental rites. But non-Catholics, whether baptized or not, are nowhere bound to observe it when they marry among themselves, nor are those born of non-Catholic parents but baptized in the Catholic Church, who from the age of infancy have grown up in heresy, schism, or infidelity, or without any religion at all, when they contract marriage with a non-Catholic (Can. 1099).

Canon 1103 prescribes that when marriage has been celebrated the parish priest or one who takes his place should

enter the marriage in the Marriage book as soon as possible. He should also make the proper entry in the Baptism book if either or both of the parties were baptized in his parish, otherwise he must send notice of the marriage to the parish priest of Baptism in order that he may make the entry in the Baptism book.

When marriage has been contracted in case of necessity without the presence of the parish priest or his delegate, if another priest was present, he and the witnesses are jointly and severally bound with the contracting parties to see that the entries of the marriage are made in the proper books as soon as possible.

CHAPTER XI

DOUBTFUL IMPEDIMENTS

1. WHEN there is a doubt as to the existence of a diriment impediment which annuls marriage by natural or divine law, marriage must not be contracted, for as there would always be a doubt as to whether it was valid, the parties would be exposed to the continual danger of sinning against the natural law. Theologians make an exception to this general rule in favour of those who labour under probable impotence, for these may marry on account of the strong presumption that all men are potent unless the contrary is certain, and because it would be an intolerable hardship to prohibit a person from marrying because of such a doubt (Can. 1068, sec. 2). In the case of a doubtful impediment of positive law, we must distinguish between a doubt of law and a doubt of fact. When there is a doubt whether the positive law extends to the particular case, as whether spiritual relationship arises between the sponsors in a private Baptism and the child, the impediment practically does not exist, as the law is of strict interpretation and the Church dispenses as far as is necessary in such a case of doubt.

When the doubt is about a fact, as whether the parties are related within the prohibited degrees of kindred, the Church does not supply if the impediment really exists, and a dispensation should be asked for to make sure. The Bishop has power to dispense in such cases of doubt (Can. 15).

When marriage is contracted with a supposed impediment which in reality does not exist, the marriage will of course be null and void if the parties thought that it was altogether impossible, and merely intended to go through the external form. On the other hand, it would seem to be valid if they intended to marry as far as they could, though they were afraid they could not do so. And so if one whose consort has been absent for a long time and who is not known to be dead, as in fact he is, marries again, giving her consent to the marriage as far as possible, it would seem that the marriage is valid though unlawful.

2. When a marriage has been contracted and a doubt subsequently arises as to the validity on account of the probable

existence of a diriment impediment, inquiry must be made with a view to settling the doubt, and in the meanwhile the party in doubt must abstain from asking for the marriage debt, though he is not precluded from rendering it to a consort who asks for it in good faith without any suspicion about the validity of the marriage. If the doubt still remains after ordinary diligence has been used in making inquiries, the doubt may be put aside, and the marriage may be presumed to be valid. The rules of law may be applied to such a case, " In doubt we must presume the validity of the act," and " In doubt the condition of him who is in possession is the stronger." These rules apply with all the greater force inasmuch as marriage is favoured, and the decision must always be given in its favour in case of doubt (Can. 1014).

If it becomes certain that a marriage which has been contracted is invalid by reason of a diriment impediment existing between the parties, and the invalidity is publicly known, the parties must separate. Otherwise there would be danger of sin and public scandal. If the impediment is secret and the parties are in good faith without any knowledge of its existence, they should be left in their ignorance until a dispensation from the impediment has been obtained. The dispensation should be executed in one of the ways to be described in a subsequent chapter.

If the parties know of the existence of the impediment and of the consequent nullity of their marriage, they must separate, at least from bed, until a dispensation can be procured. Whether they can be permitted to live together as brother and sister in the same house depends on whether they can thus avoid all proximate occasion of sin. If they cannot, some excuse to avoid scandal and awaking suspicion must be found for a temporary separation.

CHAPTER XII

DISPENSATIONS FROM DIRIMENT IMPEDIMENTS

1. THE Church cannot grant a dispensation from those impediments which belong to the natural and divine law. She cannot, for example, allow a Christian to marry again while a former wife is still alive, nor dispense in a case of certain impotence. Although she can dispense in all impediments which have their origin in ecclesiastical law, yet as a matter of fact she but seldom does so in some of them, such as the priesthood, and affinity in the first degree arising from consummated marriage. The Council of Trent decreed universally that " as regards marriages to be contracted, either no dispensation at all shall be granted, or rarely, and then for a cause, and gratuitously."[1] Still, according to modern discipline it is not uncommon for dispensations to be granted in the more remote degrees of consanguinity and affinity, in spiritual relationship, in occult crime, and in some other impediments.

2. As the diriment impediments of marriage belong to the common law of the Church, *per se* only the Holy See can lawfully dispense in them.

However, in certain cases, whether by law or by special indult, bishops and others have power to dispense.

(*a*) A bishop can dispense a doubtful impediment when the doubt is about a fact (Can. 15).

(*b*) In pressing danger of death, local Ordinaries, to appease conscience, and, if the case admit of it, for the legitimation of offspring, can dispense both in the form to be observed in the celebration of marriage, and in each and all impediments of ecclesiastical law, whether public or occult, even though they are manifold, except the impediments arising from the sacred order of priesthood, and of affinity in the direct line when marriage has been consummated (they can dispense) their own subjects wherever they be, and all who are actually staying in their territory, but scandal must be avoided, and if the dispensation is granted for difference of religion or for a mixed marriage, the usual promises must be given (Can. 1043).

[1] Sess. xxiv, c. 5, de ref. Matr.

(*c*) In the same circumstances, and only for cases in which not even the local Ordinary can be approached, both the parish priest has the same power of dispensing, and the priest who assists at marriage contracted in danger of death in accordance with Canon 1098, n. 2, and a confessor, but the latter for the internal forum in the act of sacramental confession only (Can. 1044).

(*d*) Subject to the clauses laid down at the end of Canon 1043, local Ordinaries can dispense in all the impediments mentioned in that same canon, whenever the impediment is discovered when everything is ready for the marriage, and without probable danger of grave harm the marriage cannot be put off until a dispensation is obtained from the Holy See (Can. 1045).

(*e*) This same faculty avails also for the convalidation of marriage already contracted, if there is the same danger in delay, and there is no time to have recourse to the Holy See (*ibid.*, sec. 2).

(*f*) In the same circumstances, the parish priest and other priests mentioned in Canon 1044 have the same faculty, but only for occult cases in which not even the local Ordinary can be approached or not without danger of violating the seal of confession (*ibid.*, sec. 3).

The parish priest or the priest mentioned in Canon 1044 should at once notify the local Ordinary of the dispensation granted for the external forum; and enter it in the book of marriages (Can. 1046).

The above special faculties for particular cases are granted by law; sometimes Bishops receive other faculties for granting dispensations by indult from the Holy See. The Code lays down the following rules which govern the exercise of such faculties:

In marriages already contracted or to be contracted, he who has a general indult for dispensing in a certain impediment can dispense in it even though it is manifold, unless the indult expressly prescribes otherwise (Can. 1049, sec. 1).

One who has a general indult for dispensing in several impediments of different kinds, whether diriment or prohibitory, can dispense in those same impediments even if they are public, when they occur in one and the same case (*ibid.*, sec. 2).

If ever together with a public impediment or impediments, in which one can dispense by indult, there is another impediment in which he cannot dispense, the Holy See ought to be approached for all of them; but he can use his faculties if the impediment or impediments in which he can dispense are

discovered after a dispensation has been asked for from the Holy See (Can. 1050).

By a dispensation in a diriment impediment granted either by ordinary authority or by authority delegated by general indult, but not by rescript in particular cases, legitimation of offspring is thereby also granted if any was born or conceived of those who were dispensed, with the exception of adulterous or sacrilegious offspring (Can. 1051).

A dispensation from an impediment of consanguinity or affinity granted in any degree of the impediment is valid notwithstanding a mistake about the degree in the petition or in the grant, provided that the true degree is lower, or although another impediment of the same kind in an equal or lower degree was not mentioned (Can. 1052).

A dispensation granted from a minor impediment is annulled by no defect of obreption or subreption, although the only motive cause mentioned in the petition was false (Can. 1054).

The impediments of minor degree are:

(*a*) Consanguinity in the third degree of the collateral line.

(*b*) Affinity in the second degree of the collateral line.

(*c*) Public propriety in the second degree.

(*d*) Spiritual relationship.

(*e*) Crime arising from adultery with a promise of marriage, or with attempted marriage even though it be only civil. All the other impediments are of greater degree (Can. 1042).

The Pope grants matrimonial dispensations through various Roman Congregations. The Congregation of the Holy Office grants dispensations in mixed marriages and in the impediment of difference of religion. The Congregation on the Discipline of the Sacraments grants dispensations from public impediments and for the external forum. The Sacred Penitentiary grants dispensations only for the internal forum. If a case occur in which there is both a public and an occult impediment, the petition for dispensation from the public impediment should be sent to the Sacred Congregation on the Discipline of the Sacraments in the ordinary way, and another petition without mentioning the real names of the parties should be sent to the Sacred Penitentiary, mentioning the public impediment in the case as well as the occult.

Dispensations are granted gratuitously by the Sacred Penitentiary, but for dispensations from public impediments granted by the Roman Congregations besides the expenses of agency a small tax is imposed on those who can afford to pay. This is lowered or altogether remitted in favour of the poor.

3. Matrimonial dispensations cannot be granted lawfully even by the Pope without good cause. A cause is motive or final when it is ordinarily deemed sufficient for granting a dispensation; when it only induces the superior to grant a dispensation more readily, it is said to be impulsive. When the petition for a dispensation omits to mention what should be mentioned, it has the defect of *subreption;* when it alleges what is false, there is *obreption.* When subreption or obreption occurs in the motive cause, the dispensation from the impediments of greater degree, not from those of minor degree, is invalid at least if the cause alleged was the sole cause, and even if it was not the validity of the dispensation is doubtful. Supreption or obreption in an impulsive cause does not affect the validity of the dispensation. In doubt as to whether a cause falsely alleged for a dispensation was motive or impulsive, the presumption will be in favour of the validity of the dispensation, *In dubio standum est pro valore actus.* If the motive for granting a dispensation from an impediment of greater degree ceases before the dispensation is executed, the dispensation will lapse; if, however, the motive cause ceases to exist after the dispensation has been executed, though before the marriage has been contracted, the impediment has been removed, and the parties may marry.

Propaganda, May 9, 1877, issued an instruction on matrimonial dispensations, which sets forth and explains the ordinary canonical causes which are accepted as sufficient for granting a dispensation. The same causes, however, are not sufficient for a dispensation from all impediments, and the party interested should put down in his petition all the grounds that he can find for granting the favour he requests. We cannot do better than give here the chief portion of this important document in Fr. Guy's translation:

" (1) *Smallness of the place,* either absolute or relative (as regards the female petitioner alone), seeing that in the place of her birth or even domicile a woman's relationship is so widely spread that she is unable to meet with anyone to be married to of an equal position with her own, save a relative by blood or by marriage, without leaving her country, which would be a hardship to her.

" (2) *The advancing age of the woman.* If, for instance, she is over twenty-four and has not hitherto met with one of her own position to whom she might be married. But this reason does not hold good in the case of a widow wishing to marry again.

" (3) *Deficiency or absence of dowry.* If a woman has not actually a dowry large enough to enable her to marry another of her own position, unconnected by blood or marriage, in her own place of abode. And this reason becomes all the more weighty when the woman has no dowry at all and a relation by blood or by marriage is willing to marry her, or even to make a suitable settlement upon her.

" (4) *Contentions about inheritance* that have already arisen or serious or imminent danger of the same. If a woman has on hand an important suit in reference to her inheriting wealth of great amount, and there is no one else to undertake a contention of this kind and carry it on at his own expense save the person who is desirous of marrying her, a dispensation is usually granted, for it is of benefit to the community at large that an end should be put to the contention. A reason of this nature, however, suffices only in cases of remote grades of relationship.

" (5) *Poverty* on the part of a widow with a numerous family which some man promises to support. But at times a widow obtains the benefit of a dispensation owing to her youth and the danger of incontinence.

" (6) *The blessing of peace;* and under this head come not only treaties between realms and princes, but the cessation of serious enmities, disturbances, and ill-will between citizens.

" (7) *Too great, suspicious, or dangerous familiarity,* as well as having, almost unavoidably, to dwell together under the same roof.

" (8) *Previous connection* with a relation by blood or by marriage, or with any other party under an impediment, and *pregnancy, with consequent legitimization of the offspring,* in order to provide for the well-being of the offspring and the good name of the mother, who would otherwise remain unmarried.

" (9) *Disgrace* coming upon the woman arising from a suspicion that through over-familiarity with a relative or connection she had been seduced by him, although the suspicion should be false, in a case when unless she marries, a woman seriously defamed would either remain unmarried, or must marry beneath her, or serious loss would ensue.

" (10) *Revalidating a marriage* which has been contracted in good faith, and publicly in the way prescribed by the Council of Trent, because its dissolution could hardly be brought about without grave public scandal and heavy loss, especially on the woman's part. But if the parties have got married in

bad faith, they by no means deserve the favour of a dispensation as the Council of Trent decides.

" (11) *Danger of a mixed marriage*, or of its being celebrated before a non-Catholic minister. When there is danger of those wishful of being married, though connected in one of the closer degrees, going before a non-Catholic minister for the marriage in defiance of the authority of the Church, by reason of the refusal of a dispensation, there are just grounds for dispensing; for there is imminent danger not only of a most serious scandal to the faithful, but also of apostasy and loss of faith on the part of those so doing and disregarding the impediment to matrimony, especially in countries where heresy flourishes unchecked. The same must be said in the case of a Catholic woman who ventures upon marriage with a non-Catholic man.

" (12) *Danger of incestuous concubinage.*

" (13) *Danger of a civil marriage.* From what has been said, it follows that probable danger of those who are petitioning for the dispensation having only a civil marriage, as it is called, if they cannot get the dispensation, is a lawful reason for dispensing.

" (14) *The removal of grave scandal.*

" (15) *Putting a stop to open concubinage.*

" (16) *Merit*, that is in the case of one who has by resisting the enemies of the Catholic faith, or by generosity toward the Church, or by his learning, virtue, or some other means, deserved well of religion.

" Such are the more common and strong grounds which are usually brought forward when matrimonial dispensations are to be petitioned for; and theologians and canonists treat of them exhaustively.

" But this instruction now turns to those points which, in addition to the grounds for obtaining the dispensation, must, whether by law, custom, or the practice of the curia, be expressed in the petition, or the dispensation becomes null if the truth be kept back or what is untrue is advanced even in ignorance. These are:

" (1) *The name* and *surname* of the petitioners must both be written down distinctly and clearly, without any abbreviation.

" (2) *The diocese* of birth or of actual domicile. When petitioners have a domicile out of the diocese of their birth they can ask, if they please, that the dispensation should be sent to the Ordinary of the diocese in which they are actually residing.

"(3) *The species* (in its most determinate form) of the impediment, whether it is consanguinity or affinity, public morality (*honestas*); in the case of an impediment by reason of crime, whether it arose from murder of the party's spouse with the promise of marriage, or from such murder with adultery, or from adultery alone with the promise of marriage.

"(4) *The degree of consanguinity or affinity* or morality (*honestas*) arising from a marriage ceremony, and whether it is a simple or mixed degree, the more remote as well as the less, together with the line, and whether it is direct or collateral; likewise, whether the petitioners are related by a double tie of consanguinity, both on the father's and mother's side.

"(5) *The number of impediments;* for instance, is the consanguinity or affinity twofold or manifold; or is there affinity as well as relationship; or any other kind of impediment, diriment or prohibitory?

"(6) *Various circumstances*, such as whether the marriage is to be or has been contracted; if contracted, it must be stated whether this was done in good faith at least on one side, or with a knowledge of the impediment; likewise, whether it was after proclamation of banns and in accordance with the prescriptions of the Council of Trent, or whether with the view of more easily obtaining a dispensation; finally, whether it has been consummated, if in bad faith, at least on one side, or with knowledge of the impediment."[1]

The instruction required that mention be made of incest, if this crime had been committed between the parties who asked for the dispensation, but this obligation was abolished by a decree of the Holy Office, June 25, 1885.

If a mistake occurs in the names of the petitioners, or of the diocese or parish, it does not invalidate the dispensation, provided that in the judgement of the Ordinary there is no doubt about the truth of the matter (Can. 47).

If a lower degree is put for a higher, the mistake invalidates the dispensation as a rule, otherwise if a higher or equal degree is put for a lower (Can. 1052).

4. As a rule the Holy See grants dispensations *in forma commissoria*. When the impediment is occult the commission to dispense the party labouring under the impediment is issued to the confessor. It will therefore be the confessor's duty to verify the allegations as far as possible and faithfully to observe all the conditions laid down in the papal rescript. The ob-

[1] *Synods in English*, p. 78.

servance of the conditions expressed by such terms as, *provided that*, *if*, or the *ablative absolute*, is necessary for the validity of the dispensation. Besides the conditions, certain things are also prescribed, such as the destruction of the rescript after it has been executed; but these matters do not affect the validity of the dispensation. One of the usual conditions is previous sacramental confession, which requires the hearing of the confession of the party, but not necessarily his absolution. If this clause is not in the rescript, it may be executed outside the confessional. No special form is prescribed for granting the dispensation, which may be done by word of mouth.

Notice of the dispensation if it was given for the internal but non-sacramental forum should be entered in the secret book (Can. 1047).

When the impediment is public the commission is issued to the Ordinary of the parties or to the Ordinary of the place where they live. After the Ordinary has received the rescript he may delegate the verification of the clauses to the parish priest of the parties, and after this has been done he may grant the dispensation according to the terms of the rescript, and on being signed by the Ordinary the dispensation will at once take its effect. The document or a copy of it should be sent to the parish priest, who will inform the parties that the dispensation has been duly granted (*cf.* Can. 1055, 1046, 1047, 1057).

When the bishop is able to grant the necessary dispensation, he ordinarily does so *in forma gratiosa*. This signifies that on receipt of the petition and having satisfied himself of the truth of the allegations contained in it, he grants the dispensation forthwith by signing a document drawn up in due form, and sends it to the parish priest, who will inform the parties of the terms on which it has been granted.

CHAPTER XIII

REVALIDATION OF MARRIAGE

1. WHEN marriage has been contracted invalidly the ordinary thing to do is to secure its being contracted validly, if this is possible. It may have been invalid on account of clandestinity, or for want of consent, or because there was some diriment impediment between the parties.

When the marriage was invalid on account of clandestinity, it must be revalidated by supplying the defect and contracting marriage anew before the parish priest and two witnesses. If the invalidity of the first marriage was known publicly, the second must be publicly solemnized; otherwise it will be sufficient to contract it in private (Can. 1137).

2. When the first marriage was invalid for want of consent of both the contracting parties, the only way of revalidating it is by both renewing their consent. This, again, should be done publicly if the invalidity of the former marriage was matter of public knowledge; in other cases it will be sufficient to renew consent in private. When the former marriage was invalid for want of consent of only one of the parties, it will be sufficient if this party after becoming acquainted with its invalidity freely renews his consent if the consent of the other party still persists. This may be done validly not only by express word of mouth, but by living together as man and wife, and exhibiting the ordinary signs of matrimonial union (Can. 1136).

3. When the first marriage was invalid on account of some diriment impediment between the parties, the first thing to do is to remove the obstacle to marriage by obtaining a dispensation from the impediment and duly executing it. If both the parties were aware of the impediment, they must renew their consent either in public or in private, according as the nullity of the marriage was publicly known or not (Can. 1135).

This renewal of consent is a new act of the will consenting to the marriage, with knowledge of its previous invalidity, and is necessary for validity by ecclesiastical law (Can. 1133, 1134).

If the impediment is occult and not known to one of the parties, it is sufficient for the party who knows of the impediment to renew his consent privately and in secret, provided that the consent given by the other party still persists (Can. 1135, sec. 3).

Sometimes not even this can be done, and in such cases of special difficulty recourse may be had to a dispensation *in radice*, as it is called, by which the Holy See sometimes revalidates a marriage without any renewal of consent by the parties. By a dispensation *in radice* the diriment impediment which existed is removed, the marriage is validly contracted by the consent which was given in the former marriage and which still subsists, and the children, if any have been born, are legitimized as if the former marriage had been valid. By a fiction of law, the former marriage is held to be valid and to have all the effects of a valid marriage.

It is obvious that to enable the Church to do this the impediment must be merely of ecclesiastical origin, and so capable of being removed by the Church; the consent given in the former marriage must of itself be valid and capable of effecting a real marriage except for the impediment, and, moreover, the consent of the parties must still persist at the time when the dispensation is given, otherwise true marriage can never exist between the parties. If these conditions are fulfilled by a dispensation *in radice* without any renewal of consent, the parties will be truly married, and the effects of marriage will date from the first contract, though it was invalid (Can. 1138-1141).

CHAPTER XIV

DE DEBITO CONJUGALI

1. VERBA S Pauli prooemii locum teneant nobis hanc foedam materiam breviter tractaturis: "Uxori," inquit Apostolus, "vir debitum reddat, similiter autem et uxor viro. Mulier sui corporis potestatem non habet, sed vir; similiter autem et vir sui corporis potestatem non habet, sed mulier. Nolite fraudare invicem, nisi forte ex consensu ad tempus, ut vacetis orationi; et iterum revertimini in idipsum, ne tentet vos Satanas propter incontinentiam vestram."[1]

Proinde non tantum licitus est usus conjugii sed alteri parti serio et rationabiliter petenti est ex justitia debitum sub gravi reddendum.

Quod quamvis sit certissimum admittuntur tamen causae excusantes ab hac obligatione, ita ut nulla sit obligatio reddendi debitum quando reddi non possit sine periculo vitae, morbi gravis, vel quando non rationabiliter petatur, ut ab amente aut ebrio, vel petatur nimis frequenter, ut si pluries in eadem nocte. Etiam semi-ebrio petenti videtur licitum, praesertim propter periculum gravium defectuum tum corporalium tum moralium in prole forte gignenda, debitum denegare nisi propterea timeantur rixae, discordiae, et incontinentia ex parte petentis.

Dictum est in his circumstantiis nullam adesse obligationem debitum reddendi, imo per se illicitum esset debitum reddere cum proximo periculo vitae vel sanitatis. Attamen si morbus esset diuturnus nec proxime tendens ad mortem, qualis est syphilis, permittitur sano debitum reddere cum periculo infectionis ad incontinentiam vitandam vel ad amorem conjugalem fovendum. Major difficultas habetur quando judicio medici proles gignenda morti esset matri. Tales vero casus non sunt facile admittendi, et quidem medici judicium de periculo vitae facilius pronunciant eo quod mulieres illud aucupantes videant. Nisi igitur casus sit omnino specialis, tuto confessarius consilium mulieri tale judicium medici alleganti dabit ut viro placere studeat ac cum magna fiducia Deo se committat.

[1] 1 Cor. vii 3-5.

Quum conjuges sibi invicem debitum reddere teneantur, patet eos ad simul cohabitandum regulariter etiam teneri, nisi quando necessitas id non patitur vel quando ex mutuo consensu sine periculo incontinentiae et sine scandalo aliter fit.

Conjugibus senibus vel debilibus qui saepius copulam nonnisi imperfecte exercent non est denegandus usus matrimonii dummodo aliqua sit spes eos posse rite actum perficere.

2. Quid liceat quid non liceat conjugibus sequenti regula generali continetur: Quod utile est ad actum conjugalem exercendum licet; quod est contra prolis generationem vel tendit ad illam impediendam est graviter illicitum; quod non est contra prolis generationem, quamvis sit praeter illam, saltem non est graviter illicitum.

Unde resolves: Licet conjugi tactibus et aspectibus impudicis sese ad copulam excitare, et post vir se retractavit licet uxori tactibus se excitare ad delectationem veneream completam. Copula sodomitica et copula incoepta sed abrupta cum effusione seminis extra vas mulieris graviter illicita est. Si autem experientia constat conjugibus se posse sine proximo periculo pollutionis copulam incoeptam abrumpere, non videtur hoc esse mortale si uterque consentiat. A fortiori alii tactus et aspectus turpes sine proximo periculo pollutionis a conjugibus admissi non videntur mortalia, et ab omni peccato excusantur si ex justa causa exercentur, ut ad affectum conjugalem fovendum.

3. Peccatum grave contra naturam et finem matrimonii committit vir qui copula imperfecta sese voluntarie ab uxore retrahit et extra vas seminat. Ex facto Onan vocatur peccatum onanismus.[1]

Constat autem esse peccatum grave ex Sacra Scriptura ex eo quod frustratur finem principalem matrimonii, et tendit in ruinam generis humani. Constat etiam ex pluribus responsis SS Congregationum. Moraliter nil refert quo medio peccatum hoc frustratae naturae committatur, sive instrumento quodam, sive involucro, sive lotione vasis mulieris post copulam, sive mere retractione viri ante seminationem. Si mutuo consilio et consensu conjugum tale quid fiat uterque graviter peccat.

Si tamen actus viri onanisticus uxori displiceat, quae etiam eum inducere ad rem honeste perficiendam frustra tentavit, haec non videtur prohibenda quominus debitum viro petenti reddat vel etiam ex gravi causa postulet. Ipsa enim materialiter

[1] Gen. xxxviii 9.

tantum cum peccato viri cooperatur, quae cooperatio ex gravi causa est licita. Habetur vero gravis causa tum ex parte viri ne offendatur, tum ex parte uxoris quae cum periculo incontinentiae non est privanda juribus suis maritalibus. Licet igitur mulieri etiamsi vir onanistice agat, veneree delectari in usu matrimonii, imo licet ei postquam vir sese retractavit excitare sese tactibus ad completam satisfactionem si hanc nondum sit experta.

Confessarii regulariter conjuges interrogare non debent de modo quo jura maritalia exerceant. Si tamen conjux dubia proponat de liceitate onanismi confessarius doctrinam Catholicam breviter ei declarare debet. Imo si suspicionem fundatam habet conjuges sive bona sive mala fide onanistice agere eos monere debet, cum de gravi peccato valde nocivo ipsis conjugibus et societati humanae agatur. Conjux qui doctrinae Catholicae de hac re acquiescere nolit per se absolutionis est incapax.

4. Dummodo copula rite perfici possit nullus situs in ea exercenda graviter est illicitus, et situs non naturalis cohonestatur ita ut ne venialiter quidem sit illicitus dummodo justa aliqua causa habeatur.

Vetere lege accessus ad uxorem prohibebatur menstruorum et purgationis tempore, imo antiqua lege ecclesiastica similis vigebat prohibitio. Videtur dicendum illas leges esse positivas nec amplius Christianos obligare. Variae sunt Doctorum sententiae circa liceitatem talis accessus. Rationes quas afferebant plures ut actus illiceitatem demonstrarent fabulis nitebantur, attamen scientia physiologica comprobat sententiam juxta quam ob statum nerveum mulieris menstruorum et purgationis tempore sub veniali saltem est viro abstinendum nisi justa causa excusat. Idem dicendum videtur de tempore praegnationis, imo si esset copula periculo proximo abortus sub gravi tunc esset abstinendum. Vix tamen constare potest de tali periculo unde obligatio abstinendi urgeri non valet.

Probabilis videtur sententia plurium juxta quam tactus impudici quos conjux secum exercet altera parte absente dummodo nullum sit periculum proximum pollutionis non sunt peccata mortalia. Ipse status matrimonialis, aiunt, reddit tales actus minus indecentes, ita ut quod apud solutos sit grave, apud conjugatos sit tantum veniale.

Nec delectatio morosa de copula habita vel habenda, secluso iterum periculo proximo pollutionis, videtur sub gravi conjugibus prohibita. Imo delectatio mere rationalis de objecto

licito, qualis est copula conjugibus, ne veniale quidem esset; attamen practice delectatio de actu conjugali vix mere rationalis esse poterit, quatenus naturaliter excitat sensus et membra. Unde delectatio morosa de copula habita vel habenda sub veniali saltem regulariter etiam conjugibus prohibetur.

Copulam cum conjuge exercere cum mente adulterina, cogitando de alia persona praeter conjugem, grave est peccatum propter mentem adulterinam.

BOOK X

CENSURES

PART I

CENSURES IN GENERAL

CHAPTER I

THE NATURE OF AN ECCLESIASTICAL CENSURE

1. WE here understand by a censure a spiritual and remedial penalty by which a baptized and contumacious delinquent is deprived by ecclesiastical authority of the use of certain spiritual advantages. It differs from other penalties, such as degradation, which are also spiritual and inflicted by the Church, in that a censure has in view the correction and amendment of the delinquent, while other penalties have chiefly in view the common good to be procured by the punishment and repression of crime. The Church has jurisdiction only over those who are baptized, and she punishes by censures only those of her children who have done wrong with their eyes open, with knowledge of the wrongfulness of their action and of the spiritual censure by which the Church punishes it.

A censure does not and cannot deprive a man of all the spiritual advantages which he may possess. There are some spiritual gifts in man's possession which depend only on his personal relations with God, such as sanctifying grace, and the supernatural virtues and gifts which accompany it. These may adorn the soul of one who is not baptized, and they are not possessed by all members of the Church. There are, however, other spiritual privileges which a Christian enjoys through membership with the Church of God. Among these theologians distinguish those that are internal, external, and mixed. Internal comprise the special providence and helps which God grants to the members of his Church because they belong to his Spouse who is continually interceding for them. External are the society and special charity which binds the members of the Church to each other. Mixed are the participation in the same sacraments and sacrifice, the common suffrages,

satisfactions, and indulgences, which the children of the Church in communion with her enjoy. According to the common opinion, excommunication deprives the delinquent of all these privileges, it puts him outside the communion of the faithful, and consequently leaves him without the benefits of union. The other two censures, suspension and interdict, deprive him at least of some of those benefits, as of their nature they are limited in their effect. There are, however, some theologians who with Suarez deny that a censure deprives a man of the merely internal advantages which membership with the Church confers.

2. With reference to the effects produced by them, censures are of three kinds: excommunication, suspension, and interdict. With reference to the manner in which they are inflicted, they are said to be *a jure*, or *ab homine*. The former are imposed by a stable and permanent law, the latter by way of particular precept or sentence. Sometimes a censure is incurred by the very fact of committing a crime, without any declaratory sentence of a judge; it is then said to be *latae sententiae*. Sometimes it needs the intervention of a judge, and is said to be *ferendae sententiae*.

3. Certain conditions must be fulfilled in order that a censure may be incurred:

(*a*) As it is a serious penalty, and a serious penalty can only be inflicted for a grave fault, a censure can only be incurred by one who has committed a mortal sin.

(*b*) The Church does not judge of what is merely internal, and so the fault which is punished by censure must be grave externally as well as internally. A slight blow given to a cleric, which does not constitute a serious injury, does not involve excommunication incurred by those who violate the privilege of the canon, even though the act were accompanied with mortal hatred.

(*c*) Penalties must be interpreted strictly, and therefore the crime which is punished by censures must be completed, not merely attempted.

(*d*) Inasmuch as a censure is remedial and inflicted on the delinquent for his correction and amendment, it cannot be incurred for a crime which is altogether past, and which has left no traces behind it. Sometimes suspension or interdict may be inflicted in punishment of such crimes, but then they are inflicted for a definite period, or for ever, and become pure penalties, not censures.

(*e*) There must be contumacy in order that a censure may be incurred, or, in other words, the delinquent must be con-

scious at the time that he is committing a crime which is punished by the Church by censure. It follows from this that a censure cannot be inflicted *ab homine* by a particular sentence without previous admonition, and this should ordinarily be in writing so as to be capable of proof. In censures inflicted *a jure* or *ab homine* by a general precept which is of the nature of a law, no special admonition is required, as the law itself is a sufficient admonition. Nor is an admonition necessary when suspension or interdict are inflicted by way of mere penalty (Can. 2242).

4. It is of faith that the Church has the power of inflicting censures. It is contained in the general power of binding and loosing granted to the Church by her divine Founder. This power is exercised by all ecclesiastical prelates who have jurisdiction in the external forum, unless their authority has been restricted. The Pope and a general council have jurisdiction over the whole Church, and they can bind all the faithful by their laws and censures. A bishop can inflict censures on his subjects, as can regular prelates on theirs. A parish priest has no jurisdiction in the external forum, and cannot as such impose censures, nor can laymen, nor women.

A bishop cannot lawfully exercise contentious jurisdiction outside his diocese, and consequently he cannot inflict censures outside his diocese when the case requires a judicial process. If the case does not require any judicial process, he may impose a censure on a guilty subject even when he is outside his diocese.

A bishop within his diocese may punish with censure a subject who is now outside the diocese on account of a crime which was committed within the diocese, and even on account of a crime which has been committed outside if it had reference to the diocese. And so a parish priest who is absent from the diocese and refuses to come to synod, or who is taking too long a holiday, may be punished by censure. The more probable opinion holds that a subject who violates a precept imposed under censure while he is outside the diocese incurs the censure, though St Alphonsus admits that the opposite is probable. The jurisdiction of superiors over regulars is personal, and these certainly incur censures imposed on them wherever they may be at the time when it is imposed. Regulars belonging to mendicant orders and members of the Society of Jesus have a special privilege granted by the Holy See, by which they cannot be put under censure by any bishop, even when they do wrong in matters in which their general exemp-

tion is of no avail, and in which they are subject to the bishop. In three cases, however, these religious may be punished by episcopal censure, notwithstanding their special privilege. Gregory XV permitted this in case they preach in churches not their own without the bishop's licence, or in their own without asking for his blessing, or against his command; Innocent X added to this the case of disobedience with reference to hearing confessions; and Urban VIII added the case of hanging sacred pictures painted in an unusual or scandalous manner.

5. In order to incur a censure, the delinquent must be subject to the authority which imposes it. Strangers, therefore, do not incur the particular censures which bind in the place where they are staying for a short time. If strangers, however, violate some provision of the common law which for such violation imposes a censure *ferendae sententiae*, the bishop of the place may inflict this on them. Even when they offend in other matters, the local ordinary may punish them by other penalties, and if they prove contumacious, they may be put under censure by him.

A censure *latae sententiae* is multiplied:

(1) If different crimes of which each is punished by censure are committed by the same or distinct actions.

(2) If the same crime punished by censure is often repeated so that there are several distinct crimes.

(3) If a crime punished by different censures by distinct superiors is committed once or several times (Can. 2244).

6. Grave fear and ignorance prevent contumacy, and therefore hinder one who commits a crime under their influence from incurring any censure by which such crime is punished. Grave fear, however, does not excuse from censures inflicted for crimes which produce contempt for the faith, or for ecclesiastical authority, or public harm to souls (Can. 2229, sec. 3, iii). If, however, the ignorance be crass or supine, it will not excuse from grave sin or contumacy, and so the censure will be incurred. But if the censure is inflicted on those who *knowingly*, *rashly*, *with rash daring*, or *presumption*, commit a crime, full knowledge is required in order to incur the censure, but merely affected ignorance will not prevent its being incurred (Can. 2229).

CHAPTER II

ABSOLUTION OF CENSURES

1. WHEN a censure has been incurred, it does not cease as a rule merely by lapse of time or on the correction and amendment of the delinquent. The delinquent must obtain absolution of the censure from one who is competent to give it. In some cases, however, a censure is imposed as long as certain conditions last, and then on the termination of those conditions the censure lapses without absolution.

Any confessor in the tribunal of Penance may absolve from censures inflicted by law and not reserved to the Holy See or to the bishop. Censures, too, which are imposed *ab homine* but by a general precept or ordinance are in the same category, and may be absolved by any confessor unless they are reserved (Can. 2253, i).

Absolution for a reserved censure must be sought from him to whom it is reserved, or from his delegate. Similarly, absolution from a censure inflicted *ab homine* by a particular precept must be obtained from him who inflicted it, or from his superior, or successor in office, or from some one delegated by one of these to grant absolution (Can. 2253, ii).

If a confessor in ignorance of the reservation absolves a penitent from a censure and from sin, the absolution of the censure is valid provided that it is not a censure *ab homine* or a censure most specially reserved to the Holy See (Can. 2247, sec. 3).

If there is question of a censure which does not prevent the reception of the sacraments if he who is under censure is rightly disposed and has ceased to be contumacious, he can be absolved from his sins, while the censure remains unabsolved.

But if there is question of a censure which prevents the reception of the sacraments he who is under censure cannot be absolved from his sins unless he has previously been absolved from the censure.

The absolution of a censure in the sacramental forum is contained in the usual form of absolution for sins prescribed in the Ritual; in the non-sacramental forum it may be given

in any way, but for the absolution of excommunication it is ordinarily advisable to use the form given in the Ritual (Can. 2250).

If absolution for a censure is given in the external forum it avails also for the internal forum; if it is given in the internal forum he who is absolved if there is no scandal can act as absolved also in the external forum; but unless the grant of absolution is proved or at least can be lawfully presumed in the external forum, the censure can be urged by the superiors of the external forum and the guilty party should obey them until absolution is obtained in the same forum (Can. 2251).

When treating of the sacrament of Penance in the chapter on reserved cases we saw that any priest has unrestricted faculties to absolve any penitent in danger of death, and that a simple confessor has very large powers in more urgent cases by Canon 2254.

PART II

DIFFERENT KINDS OF CENSURES

CHAPTER I

EXCOMMUNICATION

1. OF all the penalties which the Church can inflict, excommunication is the most severe, and it virtually contains the others. It deprives the delinquent of all the advantages which he possessed as a member of the Church, and puts him outside the communion of the faithful. According to the ancient discipline of the Church, no excommunicated person could hold any intercourse with the faithful, nor could the faithful hold intercourse with him, but at the close of the Middle Ages, when heresy became more common, it grew to be impossible to maintain the ancient rigour, and Martin V introduced an important mitigation in the law. By the decree *Ad evitanda*, he distinguished between those under censure who were still to be avoided and those who were to be tolerated. All who were excommunicated by name, and at the same time specially denounced by name, together with all who notoriously violated the privilege of the canon by striking clerics, were still to be avoided; all others were to be tolerated. By this concession Catholics might without scruple, as far as concerned the censure, henceforth have intercourse with persons under censure who were tolerated. The concession was not, indeed, made directly in favour of those under censure, but these could not fail to benefit indirectly by the relaxation in the law that had been granted to the faithful. The tolerated as well as those to be avoided were still theoretically subject to the former disabilities, but custom made a distinction between them in several important respects.

The Code retains the distinction between excommunicates who are to be avoided and those who are tolerated; no one is to be avoided as excommunicated unless he has been excommunicated by name by the Holy See, publicly denounced as such, and in the sentence it is expressly said that he is to be avoided (Can. 2258).

By the ancient discipline one of the faithful who held unlawful intercourse with one who was under excommunication himself incurred the minor excommunication, but this penalty has ceased to exist since the promulgation of the constitution of Pius IX, *Apostolicae Sedis*, where no mention is made of it.

2. The effects of excommunication, according to the Code, may be enumerated as follows:

(*a*) An excommunicated person has no right to assist at divine offices—that is, functions of the power of order which are ordained to the worship of God by the institution of Christ or of the Church, and which can be exercised by clerics alone.

(*b*) An excommunicated person cannot receive the sacraments, and after a declaratory or condemnatory sentence, not even the sacramentals.

(*c*) As a general rule the lawful administration of the sacraments and sacramentals is forbidden to excommunicated persons. However, especially if other ministers are not to be had, the faithful may ask for the sacraments and sacramentals from an excommunicated priest, and then the latter can administer the same without asking the reason for the request.

But from one who is to be avoided and from others after a condemnatory or declaratory sentence, only in danger of death can the faithful ask for sacramental absolution, and then also the other sacraments and sacramentals if other ministers are not to be had.

(*d*) An excommunicated person does not share in the indulgences, suffrages, and public prayers of the Church.

The faithful, however, are not forbidden to pray for him privately. Priests are not forbidden privately and with the avoidance of scandal to offer Mass for him, but only for his conversion, if he is to be avoided.

(*e*) An excommunicated person is removed from the exercise of ecclesiastical offices in law within the limits laid down under the proper heads.

(*f*) An act of jurisdiction, both of the external and internal forum, when exercised by an excommunicated person is unlawful, and also invalid after a condemnatory or declaratory sentence, with the exceptions mentioned above.

(*g*) An excommunicated person is debarred from the right of electing, presenting, nominating, he cannot acquire dignities, offices, benefices, ecclesiastical pensions, or other posts in the Church; nor can he be promoted to orders.

(*h*) After a condemnatory or declaratory sentence of excommunication he is deprived of the emoluments of office if

he had one in the Church, and if he is to be avoided, of the office itself.

(*k*) The faithful ought to avoid communicating in secular matters with one who is to be avoided, unless there is question of a spouse, of parents, children, servants, subjects, and generally unless a reasonable cause excuses it (Can. 2259-2267).

Beside the foregoing effects immediately produced by excommunication, there are others more remote. If the person under excommunication violates the censure by unlawfully and solemnly exercising sacred Orders, he incurs irregularity, and if after due admonitions he takes no steps to be released from the censure but remains in it for a whole year, he becomes suspect of heresy (Can. 985, vii; 2340).

CHAPTER II

SUSPENSION

1. SUSPENSION is a censure by which a cleric is deprived of the use of some ecclesiastical power which he has by reason of his orders, office, or benefice, or, in the words of the Code, it is a censure by which a cleric is debarred from office, or benefice, or both.

This censure, then, differs from the rest in that it is inflicted only on clerics, whom it deprives of the lawful exercise of some portion or of the whole of the ecclesiastical power which they possess. A suspended priest may hear Mass and receive the sacraments, and he retains the order or office from which he is suspended, but he cannot lawfully exercise that order or office as long as he is under censure.

Suspension may be partial, as when it deprives the delinquent of the exercise of some sacred order, or office, or of the administration and fruits of his benefice; or it may be total and embrace all those ecclesiastical powers. When a cleric is simply suspended without any special limitation he is understood to be totally suspended from all sacred orders, the exercise of his office, and the fruits of his benefice.

Suspension *ab homine*, inflicted for the perpetration of a crime, should ordinarily be imposed after the crime has been proved judicially. However, the Council of Trent[1] permitted prelates to suspend their clerics on account of a secret crime and without judicial process. If they use this right, they are said to suspend the delinquent *ex informata conscientia;* if it is inflicted as a censure they are bound to make known the grounds of their action to the delinquent himself, and they should be prepared to submit them to the Sacred Congregation if he have recourse to Rome, as he has a right to do, though he has no right to a strict appeal.[2]

Suspension inflicted for life, or for a crime which is altogether past and done with, or at the will and good pleasure of the superior, is not a censure in the strict sense, but a mere penalty inflicted in punishment for crime.

[1] Sess. xiv, c. 1, de Ref.; can. 2186 *ff.*
[2] Instruct. S.C. de P.F., October 20, 1884.

2. A suspended person who exercises an act prohibited him by the censure commits grave sin, and if he solemnly exercises sacred orders after being suspended from them he incurs the penalty of irregularity in addition (Can. 985). An act of jurisdiction on the part of one who is publicly suspended after a condemnatory or declaratory sentence, or if the jurisdiction were expressly revoked by the superior, would be invalid; otherwise it would always be valid, and even lawful if it were exercised at the request of the faithful who have the right to ask it of him.

CHAPTER III

INTERDICT

1. INTERDICT is a censure which prohibits the use of liturgical offices, some sacraments, and ecclesiastical burial. It differs from excommunication and suspension, even when the effects are similar, in that excommunication deprives the delinquent of the use of the sacraments, for example, inasmuch as that use is a communication with the faithful, and suspension deprives the delinquent of the exercise of ecclesiastical power in the administration of the sacraments, while interdict forbids their use inasmuch as they are sacred actions and objects of which for just reasons the delinquent is deprived.

An interdict is local, personal, or mixed, as the prohibition immediately affects the place, certain persons, or both.

It is general or special as it affects the whole of some country or body; or only some particular place or person, physical or moral.

A local interdict, whether general or special, does not forbid the administration of the sacraments and sacramentals to the dying under proper conditions, but it forbids in the place any divine office or sacred rite with the following exceptions:

On the feasts of Christmas, Easter, Whit Sunday, Corpus Christi and the Assumption of the Blessed Virgin, a local interdict is suspended, and the conferring of orders and the solemn nuptial blessing are alone forbidden.

If the interdict was local and general and the decree of interdict did not expressly state otherwise:

(1) Provided that they are not personally interdicted, clerics are allowed in private to exercise all divine offices and sacred rites in any church or oratory, with closed doors, in a low voice and without the ringing of bells.

(2) Moreover, in the cathedral, in parish churches, and in the only church in the place, and in these places alone, the celebration of one Mass, the reservation of the Blessed Sacrament, the administration of Baptism, the Eucharist, Penance, assisting at marriage, with the exclusion of the nuptial blessing, funerals excluding all pomp, the blessing of baptismal water, and of the holy oils, and preaching the word of God are per-

mitted. Moreover, in these sacred functions singing is forbidden and pomp in the sacred furniture, the ringing of bells, the playing of the organ and of other musical instruments; and Holy Viaticum should be carried to the sick privately.

Even if a cemetery is specially interdicted the bodies of the faithful may be buried there, but without any ecclesiastical rite (Can. 2270-2272).

2. The violation of an interdict by doing what it forbids is a grave sin, and a cleric who violates a personal interdict by the exercise of an action belonging to sacred orders or who performs such an action in a place which is interdicted by name incurs irregularity (Can. 985, vii).

CHAPTER IV

ECCLESIASTICAL PENALTIES

1. CERTAIN ecclesiastical penalties resemble censures in some respects, and it will be convenient to say a word about them here. Deposition is an ecclesiastical penalty by which a cleric as a punishment for grave crime is for ever suspended from his office and rendered incapable of holding any office, dignity, benefice, pension, or post in the Church, and deprived of those which he has, even though he was ordained on their title (Can. 2303). It differs from a censure in that it is vindictive, not remedial, and it does not endure merely until correction, amendment, and absolution; but of itself it is perpetual. The deposed cleric retains the privileges of the forum and of the canon.

2. Degradation is a more severe penalty than deposition, inasmuch as it reduces the cleric to the state of a layman as far as it is in the power of the Church so to do, and deprives him of all clerical offices, rights, and privileges. Degradation is inflicted by the bishop in punishment of grave crimes committed by clerics who are incorrigible, by depriving them solemnly of their vestments and insignia of office, and handing them over to be dealt with by the secular arm.

3. By ecclesiastical burial is meant interment in consecrated ground with the rites of the Church. All Catholics who die in communion with the faithful have a right to ecclesiastical burial. If there is no consecrated ground in which they can be buried, the grave in which they are placed is blessed at the time of interment. As far as possible Catholics should have a special cemetery of their own or a portion at least of the common cemetery assigned to them exclusively. In this a part should be left unblessed for the reception of the bodies of unbaptized infants and of those to whom Christian burial is to be denied. These are either such as are deprived of ecclesiastical burial because they died out of communion with the faithful, or those to whom it is denied in punishment of crime.

To the first category belong all who are not baptized, open and public heretics, schismatics, apostates, and those under excommunication, for " with those with whom we have not

communicated when alive we do not communicate when dead."[1]

To the second class belong suicides, unless they killed themselves while out of their mind, and this the Church readily presumes, those who have been killed in a duel, those who did not make their Easter duties, and open and public sinners. No Catholic, however, should be refused ecclesiastical burial without the sentence of the bishop.

Those also, who of their own free will chose to be cremated and persevered in this choice till death, are denied ecclesiastical burial. The Church's rites may be performed at the house and in the Church in favour of those who are to be cremated by the wish of another, but no sacred rites are permitted at the crematorium.[2]

Although cremation in itself is not intrinsically wrong, yet the Church for good reasons forbids it, and it is gravely sinful for a Catholic to take a formal part in the cremation of the body of a Catholic.

[1] C. 12, de Sepulturis.
[2] S.O., December 15, 1886; can. 1203, 1240, 2339.

PART III

SPECIAL CENSURES

THE special censures which are now in force in the Western Church are contained in Book V, Part III, of the Code—*On the Penalties of Particular Crimes*. Of the excommunications some are reserved to the Holy See in a very special manner, others in a special manner, and others simply reserved; others are reserved to bishops, and others are not reserved but may be absolved on proper conditions by any confessor. Special faculties are required in order to absolve from cases reserved to the Holy See, except in certain circumstances described in the chapter on reserved cases. Faculties for cases simply reserved will not avail for cases specially reserved, and faculties for cases specially reserved will not avail for cases very specially reserved. Censures very specially reserved to the Holy See have other characteristics besides requiring very special faculties for their absolution. Canon 2247, sec. 3, provides that where a confessor in ignorance of the reservation absolves a penitent from a censure and from a sin, the absolution is valid except in the case of a censure *ab homine*, or of a censure very specially reserved to the Holy See. Canon 2237, sec. 2, grants power to bishops to remit penalties *latae sententiae* of the common law in occult cases, but censures very specially and those specially reserved are excepted. Canon 2252 provides that when a penitent has been absolved when in danger of death by a simple confessor from a censure *ab homine* or one very specially reserved to the Holy See, if he recovers he is bound to present himself to the person who censured him or to the Sacred Penitentiary, and submit to their requirements. This is not necessary in the case of one who has been absolved in danger of death from other censures.

We shall give a list of the censures contained in the Code with brief comments where they seem to be called for.

CHAPTER I

SPECIAL EXCOMMUNICATIONS

A.—Excommunications very Specially Reserved to the Holy See

Canon 2320

I. Qui species consecratas abjecerit vel ad malum finem abduxerit aut retinuerit, est suspectus de haeresi, incurrit in excommunicationem latae sententiae specialissimo modo Sedi Apostolicae reservatam, est ipso facto infamis, et clericus praeterea est deponendus.

Abjecerit.—Spit them out, throw them away.

Abduxerit.—Take them away for superstitious purposes, to treat them irreverently.

Retinuerit.—Keep them for show, out of curiosity to see what would happen to them.

Canon 2343

II. Qui violentas manus in personam Romani Pontificis injecerit excommunicationem contrahit latae sententiae Sedi Apostolicae specialissimo modo reservatam, et est ipso facto vitandus; est ipso jure infamis; clericus est degradandus.

It is a censure which safeguards the personal immunity of the Roman Pontiff by a special form of the privilege of the canon.

Canon 2367

III. Absolvens sive fingens absolvere complicem in peccato turpi incurrit ipso facto in excommunicationem specialissimo modo Sedi Apostolicae reservatam; idque etiam in mortis articulo si alius sacerdos, licet non approbatus ad confessiones, sine gravi aliqua exoritura infamia et scandalo, possit excipere morientis confessionem, excepto casu quo moribundus recuset alii confiteri.

Eamdem excommunicationem non effugit absolvens vel fingens absolvere complicem qui peccatum quidem complicitatis a quo nondum est absolutus non confitetur, sed ideo ita se gerit, quia ad id a complice confessario sive directe sive indirecte inductus est.

See the comments on this censure above, Penance, Chapter XI.

Canon 2369

IV. Confessarium qui sigillum sacramentale directe violare praesumpserit, manet excommunicatio specialissimo modo Sedi Apostolicae reservata; qui vero indirecte tantum, obnoxius est poenis [suspensionis a celebratione Missae, et ab audiendis sacramentalibus confessionibus vel etiam pro delicti gravitate inhabilis ad ipsas excipiendas declaretur, privetur omnibus beneficiis, dignitatibus, voce activa et passiva, et inhabilis ad ea omnia declaretur, et in casibus gravioribus degradationi quoque subjiciatur.]

Only a confessor who with full knowledge of the crime which he is committing, and of its penalty, directly violates the seal of confession and incurs *ipso facto* excommunication very specially reserved to the Holy See. The penalties assigned by the Code in punishment of others besides confessors, and of confessors who presume to violate the seal indirectly, are *ferendae sententiae*.

B.—Excommunications Specially Reserved to the Holy See

Canon 2314

I. Omnes a Christiana fide apostatae et omnes et singuli haeretici aut schismatici incurrunt ipso facto excommunicationem; nisi moniti resipuerint priventur beneficio, etc.

The absolution from the above excommunication to be given in the forum of conscience is specially reserved to the Holy See. If, however, the crime of apostasy, heresy, or schism has been brought before the external tribunal of the local Ordinary in any way, even by voluntary confession, the same Ordinary, but not the Vicar-General without a special mandate, can absolve the penitent by his ordinary authority in the external forum, when abjuration has previously been made, according to law and other conditions to be complied with have been fulfilled; but one so absolved can afterwards be absolved from his sin in the forum of conscience by any confessor. But the abjuration is held to have been lawfully made when it is made before the local Ordinary or his delegate and two witnesses at least (Can. 2314, sec. 2).

Canon 1325, sec. 2, defines the terms used in this censure. " If anyone, after having received baptism, while retaining the name of Christian pertinaciously denies any of the doctrines which are to be believed by divine and Catholic faith or doubts

about it, he is a heretic; if he wholly abandons the Christian faith, he is an apostate; finally, if he refuses to be subject to the Roman Pontiff or to communicate with the members of the Church subject to him, he is a schismatic."

Canon 2318

II. In excommunicationem Sedi Apostolicae speciali modo reservatam ipso facto incurrunt, opere publici juris facto, editores librorum apostatarum, haereticorum et schismaticorum, qui apostasiam, haeresim, schisma propugnant, itemque eosdem libros aliosve per apostolicas litteras nominatim prohibitos defendentes aut scienter sine debita licentia legentes vel retinentes.

Editores.—The publishers of books defending apostasy, heresy, and schism, written by apostates, heretics, and schismatics, incur this censure when the book is published.

Defendentes.—Also those who defend those same books or others prohibited by name by apostolic letters, such as Fénelon's *Explication des Maximes des Saints.*

Legentes.—Those who read them without leave knowing that they are forbidden under censure.

Retinentes.—Retaining for any purpose whatever without leave.

Canon 2322

III. Ad ordinem sacerdotalem non promotus si Missae celebrationem simulaverit aut sacramentalem confessionem exceperit, excommunicationem ipso facto contrahit, speciali modo Sedi Apostolicae reservatam; et insuper laicus quidem privetur pensione aut munere, si quod habeat in Ecclesia, aliisque poenis pro gravitate culpae puniatur; clericus vero deponatur.

Simulaverit.—So that onlookers think he is saying Mass.

Confessionem.—So that the penitent makes his confession with a view to absolution.

Canon 2332

IV. Omnes et singuli cujuscumque status, gradus seu conditionis etiam regalis, episcopalis vel cardinalitiae fuerint, a legibus, decretis, mandatis Romani Pontificis pro tempore existentis ad Universale Concilium appellantes, sunt suspecti de haeresi et ipso facto contrahunt excommunicationem Sedi Apostolicae speciali modo reservatam.

Appellantes.—Physical persons who appeal from the Pope to an Oecumenical Council, not to a future Pope or to the reigning Pope better informed.

Canon 2333

V. Recurrentes ad laicam potestatem ad impediendas litteras vel acta quaelibet a Sede Apostolica vel ab ejusdem Legatis profecta, eorumve promulgationem vel executionem directe vel indirecte prohibentes, aut eorum causa sive eos ad quos pertinent litterae vel acta sive alios laedentes vel perterrefacientes, ipso facto subjaceant excommunicationi Sedi Apostolicae speciali modo reservatae.

Recurrentes.—Those incur this censure who with effect have recourse to the civil authority to impede any letters or acts of any kind issued by the Holy See, the Roman Congregations, Offices, Legates, Nuncios, Apostolic Delegates.

Prohibentes.—Preventing in any way their promulgation and execution.

Laedentes.—Injuring and frightening with effect those to whom the letters belong or others concerned in their promulgation and execution.

Canon 2334

VI. Excommunicatione latae sententiae speciali modo Sedi Apostolicae reservata plectuntur:

(1) Qui leges, mandata, vel decreta contra libertatem aut jura Ecclesiae edunt.

(2) Qui impediunt directe vel indirecte exercitium jurisdictionis ecclesiasticae sive interni sive externi fori, ad hoc recurrentes ad quamlibet laicalem potestatem.

Edunt.—Public authorities who make laws, issue mandates and decrees against the liberty and rights of the Church, incur this censure.

Impediunt.—As also do those who hinder with effect in any way the exercise of ecclesiastical jurisdiction by having recourse to any sort of lay authority.

Canon 2341

VII. Si quis contra praescriptum [privilegii fori] ausus fuerit ad judicem laicum trahere aliquem ex S.R.E. Cardinalibus, vel Legatis Sedis Apostolicae, vel officialibus majoribus Romanae Curiae, ob negotia ad eorum munus pertinentia,

vel Ordinarium proprium, contrahit ipso facto excommunicationem Sedi Apostolicae speciali modo reservatam.

Trahere.—Those who without leave of the Holy See summon as defendants, not as witnesses, Cardinals, Nuncios, Delegates Apostolic, or their own Ordinary before a lay judge in a civil or criminal action incur this censure.

Ausus.—Full knowledge and deliberation are required to incur the censure.

Canon 2343

VIII. Qui violentas manus injecerit in personam S.R.E. Cardinalis vel Legati Romani Pontificis . . . Patriarchae, Archiepiscopi, Episcopi etiam titularis tantum, incurrit in excommunicationem latae sententiae Sedi Apostolicae speciali modo reservatam.

Violentas.—One who inflicts an injury which amounts to a grievous sin on the body, liberty, or dignity of any of the Prelates mentioned incurs this censure. The injury must be personal and by deed, not by word.

Canon 2345

IX. Usurpantes vel detinentes per se vel per alios bona aut jura ad Ecclesiam Romanam pertinentia, subjaceant excommunicationi latae sententiae speciali modo Sedi Apostolicae reservatae.

Usurpantes.—Seizing and holding as one's own what belongs to another.

Detinentes.—Keeping what belongs to the Roman Church though it might have been bought from another who seized it.

Jura.—Rights of all sorts, but here the rights of the Temporal Power of the Pope are specially intended.

Canon 2360

X. Omnes fabricatores vel falsarii litterarum decretorum vel rescriptorum Sedis Apostolicae vel iisdem litteris, decretis vel rescriptis scienter utentes incurrunt ipso facto in excommunicationem speciali modo Sedi Apostolicae reservatam.

Fabricatores.—Forgers and falsifiers of letters, decrees, and rescripts of the Holy See are all subject to this censure.

Utentes.—Those who make use of letters, decrees, and rescripts forged or falsified by others. They must know that the documents which they use are forged or falsified.

Canon 2363

XI. Si quis per seipsum vel per alios confessarium de sollicitationis crimine apud Superiores falso denunciaverit, ipso facto incurrit in excommunicationem speciali modo Sedi Apostolicae reservatam, a qua nequit ullo in casu absolvi, nisi falsam denuntiationem formaliter retractaverit, et damna, si qua inde secuta sint, pro viribus reparaverit, imposita insuper gravi ac diuturna poenitentia, firmo praescripto Can. 894. By Canon 894 the sin, apart from the censure, is reserved to the Holy See.

On this matter, see above, Penance, Chapter XI.

C.—Excommunications Simply Reserved to the Holy See

Canon 2237, sec. 2, provides that in occult cases the Ordinary can remit, himself or through another, penalties *latae sententiae* imposed by common law, except censures very specially or only specially reserved to the Apostolic See.

Canon 2327

I. Quaestum facientes ex indulgentiis plectuntur ipso facto excommunicatione Sedi Apostolicae simpliciter reservata.

Quaestum.—Granting or publishing indulgences for money.

Canon 2335

II. Nomen dantes sectae massonicae aliisve ejusdem generis associationibus quae contra Ecclesiam vel legitimas civiles potestates machinantur, contrahunt ipso facto excommunicationem Sedi Apostolicae simpliciter reservatam.

Nomen dantes.—Becoming a member of the society.

Sectae massonicae.—The society of Freemasons.

Aliisve.—Other societies which are like the Freemasons in that they plot against the Catholic Church or against lawful civil authority, or against both. It is immaterial whether they plot openly or secretly, whether they take a secret oath or an oath of secrecy or not. The only conditions which this canon requires are that the members should form an organized society, a body corporate, and that the society should plot, work by action, speech, writing, against the Church or against lawful civil authority.

Canon 2338

III. Sec. i. Absolvere praesumentes sine debita facultate ab excommunicatione latae sententiae specialissimo vel speciali modo Sedi Apostolicae reservata, incurrunt ipso facto in excommunicationem Sedi Apostolicae simpliciter reservatam.

Praesumentes.—With knowledge of the fact and of the circumstances.

Specialissimo vel speciali.—Not simply reserved cases.

Sec. ii. Impendentes quodvis auxilium vel favorem excommunicato vitando in delicto propter quod excommunicatus fuit; itemque clerici scienter et sponte in divinis cum eodem communicantes et ipsum in divinis officiis recipientes, ipso facto incurrunt in excommunicationem Sedi Apostolicae simpliciter reservatam.

Impendentes.—Giving any sort of material assistance, help, support, or moral encouragement and support.

Vitando.—To an excommunicate who is to be avoided.

Delicto.—Precisely in the crime on account of which he is excommunicated.

Clerici recipientes.—The rector of a church allowing him to say Mass, etc., not others who assist at it.

Scienter et sponte.—Crass ignorance and fear excuse from the censure.

In divinis.—In divine worship, not in secular matters.

Canon 2341

IV. Si quis contra praescriptum [privilegii fori] ausus fuerit ad judicem laicum trahere . . . alium Episcopum etiam mere titularem, aut Abbatem vel Praelatum *nullius*, vel aliquem ex supremis religionum juris pontificii Superioribus excommunicationem latae sententiae Sedi Apostolicae simpliciter reservatam incurrit.

See above, p. 272 *f.*

Canon 2342

V. Plectuntur ipso facto excommunicatione Sedi Apostolicae simpliciter reservata:

(1) Clausuram monialium violantes, cujuscumque generis aut conditionis vel sexus sint, in earum monasteria sine legitima licentia ingrediendo, pariterque eos introducentes vel admit-

tentes; quod si clerici sint, praeterea suspendantur per tempus pro gravitate culpae ab Ordinario definiendum.

(3) Moniales e clausura illegitime exeuntes contra praescriptum Can. 601.

Clausuram monialium.—The papal enclosure of nuns with solemn vows. The enclosure comprises the whole convent except the church and adjoining sacristy and the parlour near the door.

Violantes.—By going into the enclosure without leave of the Holy See. Canon 600 gives the exceptions, which are: The local Ordinary and regular superior with companions on visitation, the confessor, civil rulers with their wives and attendants, Cardinals; with the permission of the abbess and the approbation of the local Ordinary, the doctor, surgeon, workmen for necessary repairs.

Cujuscumque.—Clerics, laymen, women, children under the age of puberty.

Introducentes.—Those who conduct them inside, open the door for them.

Admittentes.—Superioresses, porteresses, whose duty it is to keep them out.

The law of enclosure for nuns not only forbids externs to enter the convent enclosure without leave, but it also prohibits the nuns from leaving it without special leave of the Holy See except in imminent danger of death or other very serious evil (Can. 601).

(2) Mulieres violantes regularium virorum clausuram et Superiores aliique, quicumque ii sint, eas cujuscumque aetatis introducentes vel admittentes; et praeterea religiosi introducentes vel admittentes priventur officio, si quod habeant, et voce activa ac passiva.

Mulieres.—Not, therefore, men, who may enter the enclosure of regular orders of men.

Regularium.—Who take solemn vows.

Superiores.—Higher and lower, porters and others.

The rest is clear from what has been said above.

Canon 2346

VI. Si quis bona ecclesiastica cujuslibet generis sive mobilia sive immobilia, sive corporalia sive incorporalia, per se vel per alios in proprios usus convertere et usurpare praesumpserit aut impedire ne eorumdem fructus seu reditus ab iis ad quos jure pertinent percipiantur, excommunicationi tamdiu sub-

jaciat quamdiu bona ipsa integre restituerit, praedictum impedimentum removerit, ac deinde a Sede Apostolica absolutionem impetraverit.

One who, with full knowledge of the crime and its penalty, converts ecclesiastical property of any sort to his own use, or prevents its revenues going to the persons to whom they belong, cannot obtain absolution, which must be asked of the Holy See, until he has made full restitution and removed the obstacle in the way of the revenues going to those who have a right to them.

Canon 2351

VII. [Mortui ex duello aut ex vulnere inde relato privantur ecclesiastica sepultura nisi ante mortem aliqua dederint poenitentiae signa, ac praeterea] duellum perpetrantes aut simpliciter ad illud provocantes vel ipsum acceptantes vel quamlibet operam aut favorem praebentes, nec non de industria spectantes illudque permittentes vel quantum in ipsis est non prohibentes, cujuscumque dignitatis sint, subsunt ipso facto excommunicationi Sedi Apostolicae simpliciter reservatae.

Duellum.—A single combat with deadly weapons undertaken by agreement. Those who actually fight or challenge, or accept a duel, or afford any assistance or favour to those who do, incur this censure. Spectators of set purpose, those who permit it or do not stop it as far as they can, though they be kings or generals of armies, also incur it.

Canon 2388

VIII. Clerici in sacris constituti vel regulares aut moniales post votum sollemne castitatis, itemque omnes cum aliqua ex praedictis personis matrimonium etiam civiliter tantum contrahere praesumentes, incurrunt in excommunicationem latae sententiae Sedi Apostolicae simpliciter reservatam.

All who have taken a solemn vow of chastity and who presume to attempt marriage, as well as all who knowingly contract marriage with any of them, incur this censure.

Canon 2392

IX. Delictum perpetrantes simoniae in quibuslibet officiis, beneficiis aut dignitatibus ecclesiasticis incurrunt in excommunicationem latae sententiae Sedi Apostolicae simpliciter reservatam.

Delictum simoniae.—Not merely internal but external simony. Canon 728 provides that " when there is question of simony buying and selling, exchange, etc., are to be taken in a wide sense for any convention or agreement although not put into effect, even tacit, in which a simoniacal intention is not manifested expressly but may be gathered from the circumstances." Simony, then, whether of divine or ecclesiastical law, which is committed externally in election, presentation, or collation of ecclesiastical offices, benefices, or dignities, is punished by this censure and by other penalties here and in Canon 729.

Canon 2405

X. Vicarius Capitularis aliive omnes tam de Capitulo quam extranei, qui documentum quodlibet ad Curiam episcopalem pertinens sive per se sive per alium subtraxerint vel destruxerint vel celaverint vel substantialiter immutaverint, incurrunt ipso facto in excommunicationem Sedi Apostolicae simpliciter reservatam.

The terms of the censure are wide and clear. The document, whether public or private, must be of some importance, and must belong to the episcopal Curia as such.

D.—Excommunications Reserved to the Ordinary

Canon 2319

I. Subsunt excommunicationi latae sententiae Ordinario reservatae catholici:

(1) Qui matrimonium ineunt coram ministro acatholico contra praescriptum Can. 1063, sec. 1.

(2) Qui matrimonio uniuntur cum pacto explicito vel implicito ut omnis vel aliqua proles educetur extra catholicam Ecclesiam.

(3) Qui scienter liberos suos acatholicis ministris baptizandos offerre praesumunt.

(4) Parentes vel parentum locum tenentes qui liberos in religione acatholica educandos vel instituendos scienter tradunt.

Four classes of persons are punished by this censure reserved to the Ordinary:

(1) Catholics who contract marriage before a non-Catholic minister, not acting as a civil officer but as a minister of religion, whether only one or both of the parties are Catholics, whether or not a Catholic marriage is also contemplated before or after. Canon 1063 is as follows: " Etsi ab Ecclesia obtenta

sit dispensatio super impedimento mixtae religionis, conjuges nequeunt, vel ante vel post matrimonium coram Ecclesia initum, adire quoque sive per se sive per procuratorem ministrum acatholicum uti sacris addictum, ad matrimonialem consensum praestandum vel renovandum." Section 2 of this Canon forbids the parish priest to assist at a marriage if he knows that the parties have transgressed or are going to transgress this law. Section 3 allows the exception when the non-Catholic minister acts as a civil officer, and the law requires it.

(2) Catholics who marry with an explicit or implicit agreement that all or any one of the offspring of the marriage are to be brought up outside the Church. The censure would not be incurred if the agreement were made after the marriage had been contracted.

(3) Catholics who knowingly presume to offer their children to non-Catholic ministers for Baptism. Ignorance of the law or only of the censure, or of the fact that those to whom the children are offered are non-Catholic ministers, will excuse from the censure, though it be crass and supine.

(4) Parents or those who hold the place of parents who knowingly give their children to be educated or trained in a non-Catholic religion. Again, even crass ignorance excuses from the censure. *Educated* means taught and brought up in general, *trained* means taught in some special branch or branches when the general education has been completed.

Canon 2326

II. Qui falsas reliquias conficit, aut scienter vendit, distribuit, vel publicae fidelium venerationi exponit, ipso facto excommunicationem Ordinario reservatam contrahit.

Scienter affects only those who sell, distribute, or expose false relics to the public veneration of the faithful, not those who make them.

Canon 2343

III. Qui violentas manus injecerit in personam aliorum clericorum vel utriusque sexus religiosorum, subjaceat ipso facto excommunicationi Ordinario proprio reservatae.

Clericorum.—The inferior clergy, comprising all who have received the first tonsure up to bishops.

Religiosorum.—Religious of both sexes, whether under solemn or simple vows, perpetual or temporary, lay brothers and lay sisters, and also novices, but not postulants. Members

of communities living together in common under the rule of superiors according to approved constitutions, but without vows, enjoy the privileges of clerics, according to Canon 680, and this among the rest. Tertiaries who satisfy this condition enjoy the privilege, but not otherwise.

Canon 2350

IV. Procurantes abortum, matre non excepta, incurrunt, effectu secuto, in excommunicationem latae sententiae Ordinario reservatam.

Procurantes.—Using physical or moral means with the intention of prematurely causing the ejection of the fœtus—*i.e*, before the seventh month of gestation.

Matre.—Before the Code some authors excepted the mother.

Effectu.—For the censure to be incurred, it must be certain that abortion followed from the means used.

Canon 2385

V. Religiosus, apostata a religione, ipso jure incurrit in excommunicationem proprio Superiori majori, vel, si religio sit laicalis aut non exempta, Ordinario loci in quo commoratur, reservatam.

Apostata a religione dicitur professus a votis perpetuis sive sollemnibus sive simplicibus, qui e domo religiosa illegitime egreditur cum animo non redeundi vel qui etsi legitime egressus, non redit, eo animo ut religiosae obedientiae sese subtrahat. Malitiosus animus jure praesumitur si religiosus intra mensem nec reversus fuerit, nec Superiori animum redeundi manifestaverit (Can. 644, secs. 1, 2).

Canon 2388

VI. Professi votorum simplicium perpetuorum tam in Ordinibus quam in Congregationibus religiosis [matrimonium etiam civiliter tantum itemque cum aliqua ex praedictis personis contrahere praesumentes] .omnes excommunicatio tenet latae sententiae Ordinario reservata.

See above, p. 277.

E.—Excommunications Reserved to No One

From a censure which is not reserved any confessor in the tribunal of Penance, and outside the tribunal of Penance anyone who has jurisdiction over the culprit in the external forum can give absolution (Can. 2253).

Canon 2318

I. Auctores et editores qui sine debita licentia sacrarum Scripturarum libros vel eorum adnotationes aut commentarios imprimi curant, incidunt ipso facto in excommunicationem nemini reservatam.

Auctores.—Authors of notes and commentaries on Holy Scripture.

Licentia.—Leave of the Ordinary of the author, or of the place where the notes, etc., are printed or published.

Imprimi.—Having the books or notes or commentaries printed is what is forbidden under censure without leave.

Canon 2339

II. Qui ausi fuerint mandare seu cogere tradi ecclesiasticae sepulturae infideles, apostatas a fide, vel haereticos, schismaticos, aliosve sive excommunicatos sive interdictos, contra praescriptum Can. 1240, sec. 1 contrahunt excommunicationem latae sententiae nemini reservatam.

Ausi.—Crass ignorance excuses from the censure.

Mandare.—Public authority is to be understood.

Sepulturae.—Which consists not only of burial in consecrated ground, but in transferring the corpse to the church and therein holding a funeral service (Can. 1204). So that mere burial would not incur the censure.

Canon 2347

III. Quod si beneplacitum apostolicum in memoratis Canonibus 534, sec. 1, 1532 praescriptum [ad alienanda bona ecclesiastica] fuerit scienter praetermissum omnes quovis modo reos sive dando sive recipiendo sive consensum praebendo manet excommunicatio latae sententiae nemini reservata.

Scienter.—Full knowledge that there is question of ecclesiastical property, that leave of the Holy See is required for its alienation, and this under censure.

Omnes.—Not only the giver and the receiver, but all whose consent is required for the transaction, and who gave it.

Canon 2352

IV. Excommunicatione nemini reservata ipso facto plectuntur omnes, qualibet etiam dignitate fulgentes, qui quoquo modo cogant sive virum ad statum clericalem amplectendum,

sive virum aut mulierem ad religionem ingrediendam vel ad emittendam religiosam professionem tam sollemnem quam simplicem, tam perpetuam quam temporariam.

Cogant.—By violence, threats, instilling grave fear.

Emittendam.—Compelling them after they have entered freely to make their profession against their will.

Canon 2368

V. Fidelis qui scienter omiserit eum a quo sollicitatus fuerit, intra mensem denunciare contra praescriptum Can. 904 incurrit in excommunicationem latae sententiae nemini reservatam, non absolvendus nisi postquam obligationi satisfecerit, aut se satisfacturum serio promiserit.

Fidelis.—He who has been solicited and who refuses to denounce the culprit is subject to this censure, not someone else who knows of the crime.

See above on Penance, Chapter XI.

CHAPTER II

SPECIAL SUSPENSIONS

I. Si clericus, non obtenta ab Ordinario loci licentia, aliam personam [infra Praelatum] privilegio fori fruentem ausus fuerit ad judicem laicum trahere, incurrit ipso facto in suspensionem ab Officio reservatam Ordinario (Can. 2341).

II. Sacerdos qui sine necessaria jurisdictione praesumpserit sacramentales confessiones audire, est ipso facto suspensus a divinis; qui vero a peccatis reservatis absolvere, ipso facto suspensus est ab audiendis confessionibus (Can. 2366).

III. Episcopus aliquem consecrans in Episcopum, Episcopi, vel loco Episcoporum, presbyteri assistentes, et qui consecrationem recipit sine apostolico mandato, contra praescriptum Can. 953, ipso jure suspensi sunt, donec Sedes Apostolica eos dispensaverit (Can. 2370).

IV. Omnes, etiam episcopali dignitate aucti, qui per simoniam ad ordines scienter promoverint, vel promoti fuerint, aut alia sacramenta ministraverint vel receperint, sunt suspecti de haeresi; clerici praeterea suspensionem incurrunt Sedi Apostolicae reservatam (Can. 2371).

V. Suspensionem a divinis Sedi Apostolicae reservatam, ipso facto contrahunt, qui recipere ordines praesumunt ab excommunicato vel suspenso vel interdicto post sententiam declaratoriam vel condemnatoriam; aut a notorio apostata, haeretico, schismatico; qui vero bona fide a quopiam eorum sit ordinatus, exercitio careat ordinis sic recepti donec dispensetur (Can. 2372).

VI. In suspensionem per annum ab ordinum collatione Sedi Apostolicae reservatam ipso facto incurrunt:

(1) Qui contra praescriptum Can. 955 alienum subditum sine Ordinarii proprii litteris dimissoriis ordinaverint.

(2) Qui subditum proprium qui alibi tanto tempore moratus sit ut canonicum impedimentum contrahere ibi potuerit, ordinaverint contra praescriptum Can. 993, n. 4; 994.

(3) Qui aliquem ad ordines majores sine titulo canonico promoverint contra praescriptum Can. 974, sec. 1, n. 57.

(4) Qui salvo legitimo privilegio, religiosum, ad familiam pertinentem quae sit extra territorium ipsius ordinantis, pro-

moverint, etiam cum litteris dimissorialibus proprii Superioris, nisi legitime probatum fuerit aliquem e casibus occurrere de quibus in Can. 966 (Can. 2373).

VII. Qui sine litteris vel cum falsis dimissoriis litteris, vel ante canonicam aetatem, vel per saltum, ad ordines malitiose accesserit, est ipso facto a recepto ordine suspensus (Can. 2374).

VIII. Religiosus fugitivus ipso facto incurrit in privationem officii si quod in religione habeat, et in suspensionem proprio Superiori majori reservatam, si sit in sacris (Can. 2386).

IX. Religiosus clericus cujus professio ob admissum ab ipso dolum nulla fuerit declarata, si sit in minoribus ordinibus constitutus, e statu clericali abjiciatur; si in majoribus, ipso facto suspensus manet, donec Sedi Apostolicae aliter visum fuerit (Can. 2387).

X. Professus votorum perpetuorum ordinatus in sacris dimissus ob delicta minora iis de quibus in Can. 670, ipso facto suspensus manet, donec a Sancta Sede absolutionem obtinuerit (Can. 671).

XI. Clericus qui in manus laicorum officium, beneficium, aut dignitatem ecclesiasticam resignare praesumpserit, ipso facto in suspensionem a divinis incurrit (Can. 2400).

XII. Abbas vel Praelatus *nullius* qui contra praescriptum Can. 322, sec. 2, benedictionem non receperit, est ipso facto a jurisdictione suspensus (Can. 2402).

XIII. Vicarius Capitularis concedens litteras dimissorias pro ordinatione contra praescriptum Can. 958, sec. 1, n. 3, ipso facto subjacet suspensioni a divinis (Can. 2409).

XIV. Superiores religiosi qui contra praescriptum Can. 965-967 subditos suos ad Episcopum alienum ordinandos remittere praesumpserint ipso facto suspensi sunt per mensem a Missae celebratione (Can. 2410).

CHAPTER III

SPECIAL INTERDICTS

I. Universitates, Collegia, Capitula, aliaeve personae morales, quocunque nomine nuncupentur [a legibus, decretis, mandatis, Romani Pontificis pro tempore exsistentis ad Universale Concilium appellantia] interdictum speciali modo Sedi Apostolicae reservatum incurrunt (Can. 2332).

II. Scienter celebrantes vel celebrari facientes divina in locis interdictis vel admittentes ad celebranda officia divina per censuram vetita clericos excommunicatos, interdictos, suspensos, post sententiam declaratoriam vel condemnatoriam, interdictum ab ingressu ecclesiae ipso jure contrahunt, donec arbitrio ejus cujus sententiam contempserunt congruenter satisfecerint (Can. 2338, sec. 3).

III. Qui causam dederunt interdicto locali aut interdicto in communitatem seu collegium, sunt ipso facto personaliter interdicti (Can. 2338, sec. 4).

IV. Sponte sepulturam [ecclesiasticam infidelibus, apostatis, a fide, vel haereticis, schismaticis aliisve sive excommunicatis sive interdictis, contra praescriptum Can. 1240, sec. 1] donantes, interdictum ab ingressu ecclesiae Ordinario reservatum contrahunt (Can. 2339).

V. Catholici qui matrimonium mixtum etsi validum sine Ecclesiae dispensatione inire ausi fuerint, ipso facto ab actibus legitimis ecclesiasticis et sacramentalibus exclusi manent, donec ab Ordinario dispensationem obtinuerint (Can. 2375).

BOOK XI

IRREGULARITIES

CHAPTER I

IRREGULARITY IN GENERAL

1. SOME men are incapable of performing the duties attached to Orders, or, if not altogether incapable, they cannot perform them with that decency and edification which their sacred character and the Church require. A blind man cannot administer the sacraments, and one who has been guilty of great and notorious crimes is not a suitable person to exercise such holy offices and guide others in the way of virtue. Certain defects, then, and crimes, partly from the nature of things, partly because the Church has so ordained, constitute a bar to the reception of Orders. These are called irregularities, and an irregularity is commonly defined to be a canonical impediment which primarily prevents the reception of Orders, and, secondarily, the lawful exercise of the duties and rights annexed to them. It is an impediment constituted by law, though it has its foundation in the nature of things, and so there can be no irregularity unless it is expressly sanctioned by law (Can. 983). It does not make the reception of Orders or their exercise invalid; it only makes these acts gravely sinful in one who is under irregularity, and forbids under pain of grave sin the admission of such a one to the clerical state or the conferring of Orders on him. When Orders have been already received, an irregularity can only produce its secondary effect and hinder their lawful exercise (Can. 968, sec. 2). Even this effect has place only in respect of sacred Orders, for, according to present discipline, laymen may lawfully exercise the functions of the minor Orders, with the exception of those of the exorcist.

2. Irregularities are said to be *from defect* when they arise from an incapability of exercising the functions of Orders or from the indecency there would be in exercising them. They are said to be *from crime* when the Church has expressly laid down that the commission of such a crime shall entail irregularity in the delinquent.

Irregularity is perpetual and lasts for life unless it is removed

by dispensation, and no dispensation can be granted for some irregularities arising from defect (Can. 983).

Irregularity which prevents the reception of Orders, and consequently the exercise of them, is said to be *total;* that which supervenes on the reception of Orders and only prevents their lawful exercise is *partial.*

3. As only males and those who are baptized can be validly ordained, the same two conditions are required in order to be subject to irregularity. There is nothing to prevent the same person from being subject to several different irregularities arising from different defects or crimes, nor from being subject to several irregularities of the same species arising from several crimes committed against different people, as from several homicides; but otherwise only one irregularity is contracted from one and the same cause though several times repeated, and so a priest who while under suspension celebrates Mass several times only incurs one irregularity (Can. 989).

Whenever there is a doubt either of law or of fact as to whether an irregularity has been incurred, almost all authorities agree that in practice it must be held not to have been incurred.

Irregularities are incurred even by those who are ignorant of them (Can. 988).

Besides irregularities which of themselves are perpetual impediments to the reception of Orders, the Code enumerates certain simple impediments which cease to exist on certain conditions. They are: (1) The sons of non-Catholics as long as their parents remain in error; (2) husbands who have wives; (3) those who hold an office forbidden to clerics; (4) slaves; (5) those bound to military service; (6) neophytes; (7) those who labour under infamy of fact (Can. 987).

CHAPTER II

IRREGULARITIES FROM DEFECT

THE illegitimate are irregular from defect of birth (Can. 984).

1. Defect of birth arises from illegitimacy, when the parents are either not married at all, or their marriage in the eyes of the Church is null and void on account of some diriment impediment known to both parties. If the impediment was unknown to at least one of the parents, the marriage is called putative, and the offspring is legitimate. When there is a doubt concerning legitimacy, as in the case of foundlings, legitimacy may be presumed until the contrary is proved.

This irregularity ceases by legitimation, dispensation, and solemn religious profession. If the parents at the time of conception or birth of the child could have been married, the child is by ecclesiastical law legitimized by subsequent marriage (Can. 1116); otherwise it can only be legitimized by the rescript of the Pope. A dispensation from this irregularity may be granted by the Pope, and by delegated authority by bishops, regular prelates, and others. Solemn religious profession takes away the irregularity as far as it is a bar to the reception of Orders, but not so as to enable the party to accept prelacies in the Order without dispensation.

2. Any bodily defect which makes it impossible to say Mass and fulfil the other functions of Orders, or prevents the person afflicted from exercising the sacred ministry with decency and edification, constitutes an irregularity. Thus the blind, deaf, mute, lame, crippled or maimed in limb or even necessary fingers, notably deformed, and those who cannot drink wine, are irregular.

In case of doubt the bishop may decide as to whether a person is irregular, and in such a case he may dispense as far as is necessary. If the irregularity is certain, only the Pope or his delegate can dispense. A dispensation from this impediment is more easily granted after ordination than before, to enable a priest to exercise his functions.

3. Marriage as a sacrament symbolizes the union of Christ with his Church, but to represent that union perfectly it should be a marriage of one man with one woman. In a

second marriage the representation is less perfect, and such a bigamous marriage gives rise to the irregularity from defect of the sacrament.

A man becomes irregular from bigamy when he has contracted two or more valid marriages in succession.

4. Defect of lenity may cause irregularity in two ways:

(1) In the case of a judge who has passed sentence of death.

(2) In those who have undertaken the office of executioners of a death sentence and their voluntary and immediate assistants.

5. Loss of reputation, or infamy, is a cause of irregularity. Those who are guilty of certain grave crimes are declared by canon law to be *ipso facto* infamous, and become irregular.

6. Those who are or who have been epileptics, insane, or possessed by the devil are irregular; if they became such after being ordained and are now certainly free, the Ordinary can permit his subjects to exercise again the Orders which they have received.

CHAPTER III

IRREGULARITIES ARISING FROM CRIME

ACCORDING to Canon 985, the following are irregular from crime. These crimes, however, do not cause irregularity unless they were grave, external sins, whether public or occult, and committed after Baptism, except in the case of receiving Baptism from non-Catholics (Can. 986).

(1) Apostates from the faith, heretics, schismatics.

(2) Those who have allowed themselves to be baptized by non-Catholics in any way except in case of extreme necessity.

(3) Those who have dared to attempt marriage or to go through the form of a civil marriage, when either they themselves are bound by the bond of marriage or of a sacred Order or religious vows though only simple and temporary, or with a woman bound by the same vows or united in a valid marriage.

(4) Those who have committed voluntary homicide, or procured with effect the abortion of a human fœtus, and all who co-operate in these crimes.

(5) Those who have mutilated themselves or others or have attempted to take away their own life.

(6) Clerics who practise medicine or surgery forbidden to them, if death follows therefrom.

(7) Those who exercise an act of Orders reserved to clerics constituted in a sacred Order, when either they do not possess that Order, or have been forbidden its exercise by a canonical penalty, whether personal or local, medicinal or vindictive.

CHAPTER IV

REMOVAL OF IRREGULARITIES

As a general rule irregularities cease only by dispensation granted by the Holy See through the Sacred Congregation on the Discipline of the Sacraments for the external forum, and through the Sacred Penitentiary for the internal forum.

Ordinaries personally or through another have power to dispense their subjects from all irregularities arising from occult crimes, except from voluntary homicide or the procuring of abortion with effect, and others brought before their judicial forum.

All confessors have the same power in more urgent occult cases in which not even the Ordinary can be approached, and there is danger of serious harm or loss of reputation, but only to enable a penitent to exercise lawfully the Orders which he has already received (Can. 990).

When there is a doubt of fact about an irregularity an Ordinary can dispense if the Holy See is accustomed to dispense in such cases (Can. 15).

The simple impediments cease on the total cessation of the cause or fact from which they arise, and by dispensation.

In the petition for a dispensation from irregularities and simple impediments all the irregularities and impediments in the case should be mentioned. A general dispensation will not avail for those not mentioned in bad faith.

If there is question of a dispensation from voluntary homicide, the number of crimes must be mentioned under pain of invalidity of the dispensation (Can. 991).

BOOK XII

INDULGENCES

CHAPTER I

THE NATURE OF AN INDULGENCE

1. IN every sin the teaching of the Catholic Church distinguishes two elements: the *guilt* and the *penalty* which it incurs. The guilt is the injury committed against God by the sinner and the displeasure with which God views the sinful act. If the sin is mortal, it deprives the soul of sanctifying grace and of God's friendship, so that a state of enmity exists between God and the sinner. A venial sin is an injury against God; it is the object of his displeasure, and is a stain on the soul, but it does not rob the soul of sanctifying grace or deprive it of the friendship of God. Besides this guilt a sin deserves and ordinarily receives punishment at the hands of God. It is a law of God's justice that wrongdoing entails suffering either in this world or in the world to come. It is the sanction which in the nature of things is annexed to the great moral law. The penalty for mortal sin, as befits the unrepenting and obstinate enemies of God, is eternal separation from him and punishment in the fires of hell; the penalty for venial sin is temporary punishment in this world or in purgatory. These two elements in sin are not only distinct from each other in thought; they may be, and frequently are, separated in reality. When God pardons mortal sin, the eternal penalty which it deserves in hell is also remitted, but we know from revelation that he frequently exacts from the sinner some temporary punishment for the serious offence which has been committed against him and right order. The guilt of David's adultery was forgiven on his repentance, but he had to endure the loss of the child and other punishments. This is only in keeping with what we might expect at the hands of a wise Providence and with what observation of the order of nature teaches us. A man may truly repent of his sin, and he may have the fullest confidence that God has pardoned it, but he knows that he will have to bear the sad effects of it till his dying day.

This distinction between the guilt of sin and the penalty

due to it is necessary for the understanding of what is meant by an indulgence. An indulgence is not the forgiveness of the guilt of sin; much less is it a permission to commit sin. It is the remission of the temporal punishment which often remains due to sin after its guilt has been forgiven. An indulgence, then, cannot be gained for unrepented sin, nor for sin of which the guilt still stains the soul. If, however, the guilt has been forgiven, any temporal punishment which remains to be suffered in consequence of it may be remitted by indulgences and by other means.

2. As the Catholic Church claims that her divine Founder empowered her ministers to forgive sin, provided that the sinner has the requisite dispositions, so she also lays claim to the power of remitting the temporal punishment due to sin both by the ministration of the sacraments and by granting indulgences. From the first centuries of the Christian era her bishops have used the power to condone temporal punishment due to sin outside sacramental confession, and they have understood that this power was contained in the general power to bind and loose granted to the Apostles and their successors by our Lord. As the Pope has jurisdiction over the whole world, he can grant indulgences to all the faithful; a bishop can only grant indulgences to those who are within his diocese, and up to the limits imposed on him by the supreme authority of the Roman Pontiff (Can. 349, sec. 2, ii).

The doctrine of indulgences is intimately connected with other dogmas of the Catholic faith. When the Church remits temporal punishment due to sin, she does not simply condone it outright in the name of God, but she pays the debt due to sin out of the treasure of the Church. This treasure of the Church is made up of the satisfactions of our Lord and of his saints. Christ and all the members of his Church form one mystical body: "For as in one body we have many members, but all the members have not the same office: so we being many, are one body in Christ, and every one members one of another."[1] "One body and one Spirit: as you are called in one hope of your calling. One Lord, one Faith, one Baptism. One God and Father of all, who is above all, and through all, and in us all."[2] By virtue of this oneness in Christ, there is among the faithful what is called the communion of saints. Not only do all get the benefit of the same sacrifice and sacraments, but the good works of each benefit to some extent all the rest. The merit, indeed, which every good action possesses

[1] Rom. xii 4. [2] Eph. iv 4-6.

with God, with a view to an eternal reward, is personal and belongs exclusively to the doer of it; but besides meriting, every good action has also a power of placating God and satisfying for sin, as well as a power of impetrating his graces and blessings. The satisfactory part of the good actions of Christ and his saints was not required to satisfy for their own offences, and it is available to satisfy for the sins of those who form with them one mystical body. It needs, however, application to the individual soul, and one of the ways in which this is done is through indulgences. The dispensing of the mysteries of God belongs to the prelates of his Church, and inasmuch as they have jurisdiction over the faithful in this life, indulgences are applied to them directly by the power of the keys.

Over the faithful departed who are suffering for their sins in purgatory the Church has no jurisdiction, but as we can pray for them, and they are helped thereby, so if the Church permits it we can gain indulgences and apply them to the souls of the faithful departed by way of suffrage, asking God to accept the satisfaction offered for the holy souls (Can. 911).

3. A plenary indulgence is one by which all the debt of temporal punishment due to a person for his sins is remitted, while a partial indulgence, of say, forty days, remits the same amount of temporal punishment as would have been remitted by undergoing canonical penance for forty days according to the ancient discipline of the Church.

Indulgences are local, if they can only be gained in a particular place, as by visiting some particular church; they are personal, if they are attached to certain persons who fulfil certain conditions; they are real, if they are attached to a particular object, as to a crucifix or a rosary.

Again, they are temporary if they can only be gained within a specified time; if granted without any time limit, they are perpetual.

CHAPTER II

CONDITIONS REQUIRED FOR GAINING INDULGENCES

1. THERE must always be a just cause for granting an indulgence, otherwise the grantor would not be a faithful dispenser of the mysteries of God, and he would fail in the trust committed to him by God. In practice, however, this does not concern the faithful to whom indulgences are granted; they may rest assured that there is always a just cause for the indulgences which the Church offers for their acceptance.

2. No one can gain an indulgence unless he is a member of the Catholic Church, and, moreover, he must have the requisite intention, he must be in the state of grace, and he must fulfil all the conditions prescribed for gaining the indulgence.

It is not necessary that the intention be actual; it is sufficient if it be virtual, so that there was the wish to gain the indulgence, and it continues to influence the actions whose performance is required for the purpose of gaining the indulgence. It will be sufficient to form an intention in the morning of gaining all the indulgences which may be annexed to any of the good works done during the following day. Some authorities hold that such a virtual intention is not necessary, but that an habitual, or even an interpretative intention, will suffice. An habitual intention is one which was formed and which has not been retracted, but which does not influence the performance of one's actions any longer. An interpretative intention does not exist in reality, but it would be elicited if the agent thought of the matter. Inasmuch as an indulgence is a grant made by the Church to all who fulfil certain conditions, these authors maintain that all pious Catholics who value indulgences gain such as are annexed to their prayers and other good deeds without any special intention. This opinion, however, though probable, is not certain, and so it is safer in practice to follow the other, which requires at least a virtual intention, especially as it is doubtful whether probabilism can be used in this matter. Canon 925, sec. 2, says that a *general* intention is requisite, which many interpret as signifying an habitual intention.

3. The person who gains an indulgence must also be in the state of grace, for one who is in mortal sin, at enmity with

God, and liable to eternal punishment, is not a fit subject for the remission of temporal punishment due to his sins. The Church, too, requires that those who wish to gain the indulgences which she offers to her children should be contrite in heart, or, in other words, in the state of grace, recovered, if they had fallen, by means of sacramental confession, or at least by an act of perfect contrition. When several actions, such as visiting a church, prayer for the Pope, confession, etc., are prescribed for gaining an indulgence, it is not absolutely necessary that all such actions be performed while the agent is in the state of grace; it will be sufficient if the soul be in the state of grace when the last condition is fulfilled and when the indulgence is applied.

4. Finally, all the conditions laid down by him who granted the indulgence must be faithfully fulfilled by anyone who wishes to gain it. If the indulgence be annexed to the saying of a prayer, the prayer must be said with the lips; it is not sufficient to repeat it mentally. Deaf-mutes satisfy the condition by raising their minds to God in the place where public prayers are said by others (Can. 936), and if one of the conditions for gaining an indulgence is visiting a church and praying therein for the intentions of the Holy Father, they may fulfil this condition by visiting the church and praying mentally or reading the prayers from a book.

The ordinary conditions prescribed for gaining a plenary indulgence are: prayer for the intentions of the Sovereign Pontiff, visit to a church, and confession and Holy Communion.

To satisfy the condition of prayer for the intentions of the Pope, any form of prayer which is not already of obligation will suffice. A priest, therefore, could not satisfy this condition by saying his breviary, to which he is already bound by the law of the Church, but it has been decided that when indulgenced prayers are prescribed by a confessor for sacramental penance, the penitent may say his penance and gain the indulgence at the same time. The length of prayer for the Pope's intention is not ordinarily defined, but authors are agreed that five Our Fathers and five Hail Marys will suffice. The Pope's intentions are: the common good of the Church, the propagation of the Faith, the conversion of sinners, heretics, and schismatics, and peace and concord among Christian peoples. To gain the indulgence it is not necessary to have these intentions distinctly in mind; it will be sufficient to pray for the Pope's intentions in general.

The prayers may be said alone or with others alternately, and they may be said anywhere, unless it is specially prescribed that they are to be said while visiting the church.

Unless some special church is mentioned for the visit, any church or public oratory to which the public have free access may be selected. Semi-public oratories of religious and other communities will suffice (Can. 929), but private chapels will not suffice, unless by special indult.

5. Canon 931 specially provides that for the gaining of any indulgences whatever, when confession is required, it may be made within the eight days which immediately precede the day to which the indulgence is annexed, and the Communion may be made on the eve of the same day; and, moreover, both may also be made within the whole of the following octave.

The faithful who are accustomed, unless they are lawfully prevented, to go to sacramental confession at least twice a month, or to receive Holy Communion daily with a right intention and piously, in the state of grace, though they may abstain from it once or twice in the week, can gain all indulgences, even without actual confession, which otherwise would be necessary to gain them, except the indulgences of an ordinary or extraordinary jubilee or one granted after the manner (*ad instar*) of a jubilee.

If a visit to a church or oratory is required for gaining an indulgence annexed to a certain day, the visit may be made at any time between midday on the previous day and midnight which terminates the day itself (Can. 923).

Canon 935 grants power to confessors to commute the good works enjoined for gaining indulgences into other good works in favour of those who are hindered from fulfilling them by any lawful impediment.

The conditions enjoined may be fulfilled in any order.

6. According to the general rule, an indulgence can only be gained once on the day designated, but not infrequently an indulgence is granted *toties quoties*, and then it may be gained as often as the conditions are fulfilled. In this case if confession and Communion, or in general any good work which is not capable of being repeated on the same day, be among the conditions prescribed, such conditions are only fulfilled once, and the others are repeated as often as it is desired to gain the indulgence. When several indulgences are attached to the same action, and this cannot be repeated, as is the case with Holy Communion, all the indulgences may be gained by

the one action. If, however, the action enriched by several sets of indulgences be capable of being repeated on the same day, such as saying the rosary, as a general rule only one set of indulgences determined by him who wishes to gain them can be gained by performing the action once. Pius X, however, by a decree dated June 12, 1907, made an exception to this rule in favour of rosaries enriched with the Croisiers' indulgences, which may now be gained in reciting the rosary cumulatively, together with other indulgences already granted to the same rosaries.

It must frequently happen that plenary indulgences cannot be gained in full on account of some obstacle in the way, such as unforgiven venial sin. In such a case Canon 926 makes it clear that according to the intention of the Church the indulgence takes its effect as far as possible, and becomes in fact a partial indulgence.

7. Almost all indulgences are now applicable to the souls in purgatory (Can. 930). In order that they may be applied to them in fact, the person who fulfils the conditions should form his intention of offering them to God for the benefit of certain souls, or for the benefit of the souls in purgatory in general. It is a controverted point among the theologians whether such application is infallible in its effect or not. The difficulty is about the divine promise to accept such offerings, some theologians holding that such a promise is implicitly contained in the words of our Lord: " Whatsoever you shall loose on earth shall be loosed also in heaven "; others denying this. The negative opinion seems to be more in accordance with the mind and practice of the Church.

Similarly, it is a disputed question among theologians whether one who gains an indulgence for the souls in purgatory must himself be in the state of grace. Many hold that he must be, as he must gain the indulgence himself before he can apply it to the holy souls. Others do not see the necessity of this, for such a one only fulfils the conditions, and on the fulfilment of these the Church offers to God the corresponding satisfactions. Both opinions are probable, but the former is safer in practice.

8. Objects to be indulgenced should be solid and not easily breakable. Hence pictures on paper, and hollow glass beads, may not be indulgenced; but beads made of solid glass, or of iron, or wood, may be.

Objects do not lose their indulgences as long as they remain morally the same. In a rosary the indulgences are attached

to the beads, not to the string, so that even though the string be changed, or a few beads be lost and others substituted for them, the indulgences are not lost. When a crucifix is indulgenced, the indulgence is attached to the image, not to the cross.

To prevent the danger of simony, indulgences attached to a movable object are lost if it is sold, or if it is completely destroyed (Can. 924, sec. 2).

CHAPTER III

THE JUBILEE

1. A JUBILEE is a plenary indulgence granted by the Pope with greater solemnity than usual for a definite time, together with special faculties for confessors. The first jubilee was granted by Boniface VIII in the year 1300 with the intention that it should be held thereafter every hundred years, but subsequent Popes changed the period into fifty, thirty-three, and finally into twenty-five years. This is called a greater or ordinary jubilee, to distinguish it from the less or extraordinary jubilee, which the Pope grants on some special occasion, as, to celebrate his election to the papacy. A general jubilee is granted to all the faithful, usually in the first place at Rome, and afterward it is extended to the rest of the world; a particular jubilee is granted to a particular province or religious order.

2. The conditions prescribed for gaining an ordinary jubilee are: confession, Communion, and prayer for the Pope's intentions in churches to be visited for the purpose a certain number of times.

Confession is necessary for those who wish to gain the jubilee even if they are not conscious of mortal sin, and the annual confession which is prescribed by ecclesiastical law will not suffice. If a grievous sin is inadvertently omitted from the jubilee confession, this is nevertheless sufficient for gaining the indulgence, but of course the sin which was forgotten must be mentioned in the next confession. If, after going to confession and before fulfilling the other conditions for gaining the jubilee, mortal sin is committed, the person should go again to confession to gain the indulgence.

A good Communion distinct from the ordinary Easter Communion is another of the conditions to be fulfilled.

At Rome the four basilicas, St Peter's, St Paul's outside the Walls, St John Lateran, and St Mary Major, are usually designated to be visited a certain number of times, and during the visits prayer is to be offered up for the Pope's intention. Outside Rome the churches to be visited are usually left to be determined by the bishop. The visits must be made in

one day according to either the civil or the ecclesiastical method of reckoning, or, in other words, reckoning either from midnight to midnight, or from the hour of vespers.

For an extraordinary jubilee, besides the above conditions, fasting and almsgiving are also prescribed.

The fast is a strict one. A day which is not a fasting day by ecclesiastical law must be chosen, unless the contrary is specially conceded in the bull of indiction of the jubilee, and then the strict fast must be observed, nor can advantage be taken of any indult. Even those who are not bound by the ecclesiastical law of fasting must fulfil this condition if they wish to gain the jubilee.

The amount to be given in alms is not generally specified, and any amount will suffice provided that it is not so small as not to deserve the name. Religious, wives, children, and servants, may have their obligation fulfilled for them by superiors, husbands, parents, and masters.

Bishops and confessors receive faculties to commute all the above conditions for ordinary and extraordinary jubilees except prayer, confession, and sometimes Holy Communion. For the lawful and valid use of this faculty there should always be a just cause, and some good work of more or less equal merit should be enjoined in place of that commuted.

3. Regulars who desire to gain the jubilee may choose a confessor from among those, whether secular or regular, who are approved by the bishop, or they may confess to one approved by their superiors. Nuns are sometimes empowered to choose a confessor for the purpose of gaining the jubilee from any priests approved by the bishop; sometimes it is prescribed that the confessor chosen must be one of those who are approved for the confessions of nuns. Confession may be made to the priest thus chosen as often as the penitent desires before the fulfilment of the last condition for gaining the jubilee, but not afterward.

The confessor chosen for the jubilee confession has special faculties given to him by the bull of indiction. This should always be carefully studied in order that the confessor may know the extent of his powers. Ordinarily, he is empowered to absolve penitents from all censures and sins, even those that are reserved. The cases of attempted absolution of an accomplice and a false charge of solicitation are generally excepted, or power to absolve them is only granted under restriction. The absolution would be valid if the penitent who came to confession with the intention of gaining the jubilee afterwards

changed his mind and gave up the attempt; and probably the reservation would be removed if a reserved sin were confessed by such a penitent, though the confession were sacrilegious, or inculpably null and void.

Jubilee confessors have also ample faculties granted them for dispensing from vows or commuting them, though vows of perpetual chastity, of entering a religious order with solemn vows, and those which have been accepted by third parties, are usually excepted.

While the greater jubilee is being celebrated at Rome, the special faculties granted to bishops and priests for the internal forum are ordinarily suspended, at least with respect to penitents who can make the journey to Rome.

In the same way during this time other indulgences granted by the Pope in favour of the faithful who are living are suspended, though they may all be gained for the faithful departed. Certain special indulgences, as those for the saying of the Angelus, those granted to the dying, and for the solemn exposition of the Blessed Sacrament, are excepted.

APPENDIX

A SHORT HISTORY OF MORAL THEOLOGY

ETHICS has a special place in the Christian religion. Lactantius, writing under the Emperor Constantine, points out this fundamental difference between paganism and the true religion. Pagan religion, he says, is concerned only with external rites and ceremonies performed in honour of the gods; it gives no precepts of righteousness and virtue; it does not form and cultivate men's characters.[1] On the other hand, ethics forms an essential part of the Christian religion. Christ was called Jesus because he came among us to save us from our sins. This he did not only by atoning for them, but by his example, his teaching, and his grace he showed us how to lead good lives and enabled us to do it. He came to do and to teach, so that not only his words but his actions, too, were lessons to us in conduct. He proposed himself to us as the Way by which we should walk; he bade us follow his example; he taught us to learn of him meekness, humility, and all virtues. In him God, our Creator and Lord, was revealed to us; he is our first beginning and last end. To him we must refer and order our whole lives and our every action. We are his stewards, and when life comes to an end each of us will be called upon to render a strict account to him, as our judge, of every thought, word, and action of our lives. Heaven will be the reward of the faithful servant, eternal suffering in hell will be the just punishment of the wicked.

Before finally quitting the earth our Lord founded his Church, a hierarchical society of men, to continue the work which he had begun for the sanctification and salvation of the whole human race. His last solemn commission to his Apostles was a command to teach men to observe all that he had commanded; certain truths had been revealed to them concerning God, as well as moral rules for their guidance, but even the truths concerning God were not merely speculative; they, too, were revealed for the sanctification and salvation of men. A duty of submission of the intellect, under pain of eternal

[1] *De Divinis Instit.*, iv, c. 3.

damnation, was laid on all who heard the Gospel preached. The basis of Christian morality thus rests firmly established on the word of God, requiring unwavering faith, not on the uncertain and shifting sands of human opinion. That Gospel contained not only moral precepts which are obligatory on all, but counsels also of great perfection which those who had the moral strength were encouraged to adopt as rules for the conduct of their lives. The perfect holiness of God himself was held up as the model which they were to imitate and the lofty ideal at which they were ever to aim.

This revelation of Christ was committed to the Church as a sacred deposit to be faithfully kept, guarded from all admixture of error, and diligently preached to men for their instruction, guidance, sanctification, and salvation. The Catholic Church has always understood that this was the object of her foundation by Jesus Christ. That was her mission, to preach the Gospel, to keep the deposit of faith, to teach what Christ had revealed, and not to allow it to be changed or corrupted even by an angel from heaven. It is the boast of the Catholic Church that by the assistance which Christ promised her, through the constant guidance of the indwelling Spirit of Truth which he sent down upon her, she has faithfully accomplished her task. In spite of enemies within and without, in defiance of the hostile powers of hell and of the unbelieving world, she has persisted through the ages in preaching in season and out of season the divine revelation which was committed to her faithful keeping. At first sight it might seem that no history of such a system of doctrine is possible. History is the scientific narration of the varying fortunes and changes which befall the subject of it. What history can there be of a system of doctrine which has always been the same ?

The Christian revelation as taught by the Catholic Church does indeed always remain the same in itself, objectively, as it was completed when the last of the Apostles died. This revelation, and nothing else, the Church was commissioned to keep and to preach to the end of time for the salvation of men. It is the Church's greatest boast, as it is her highest claim to our gratitude, that she has ever preserved unsullied through the ages the divine teaching of Jesus of Nazareth. No man ever taught like him. The moral doctrine which he inculcated by word and by deed is the loftiest ideal of conduct which has ever been manifested to the world. It cannot be improved upon, and it is impious to attempt to change it. The

Catholic denies that it has been changed in the Catholic Church. Non-Catholic historians of Christian morals profess to discover instances of change, but this is due to their own philosophical or religious presuppositions. Thus when the Lutheran Dr. Luthardt discovers in the *Didaché*, written, as he acknowledges, at the end of the first century, "the beginnings of a false view of works,"[1] we reply that the same view of works appears in the documents that make up the New Testament, and that it is not false. Lecky discovered a change of view as to the lawfulness of taking human life when Christianity became the official religion of the Roman Empire.[2] In proof of this he quotes Lactantius and one or two other Fathers who held that it is never lawful to take human life. It would not be difficult to quote instances of Christian writers up to our own days who have held the same doctrine, and one might deduce therefrom an argument to show either that Christian morality had progressed, or deteriorated, or had remained stagnant for nineteen centuries, according to the exigencies of one's philosophical system. Harnack discovers the sources of Catholic monachism in the writings of St Methodius.[3] The Catholic sees them writ large in the Gospel of St Matthew.

These instances will show why the Catholic cannot accept the accounts of growth, change, and decay which are given in many so-called histories of Christian morals. Nevertheless, he allows that there is a progress and development which admits of being traced historically. The Catholic Church has always been explicit on this point. After teaching that the revealed doctrines of the Faith were not proposed by God to man's intellect to be improved upon like some philosophical system, but were committed to the Church as a divine deposit to be faithfully kept and infallibly explained, the Council of the Vatican could find no better terms in which to describe true development of that doctrine than those which had been used by St Vincent of Lerins in the fifth century.

"Therefore," it says, "let the understanding, knowledge, and wisdom of each and of all, of individuals as well as of the whole Church, increase and make much and great progress through the ages and the centuries; but only in its own line, that is, in the same truth, in the same sense, and in the same thought."[4] Change in Christian dogma and morals we refuse

[1] *History of Christian Ethics*, p. 117.
[2] *History of European Morals*, ii, p. 42.
[3] *History of Dogma*, iii, p. 110.
[4] Vatican, sess. iii, c. 4.

to accept or to acknowledge; we readily admit that there has been and ought to be development. The precepts of Christian morality have not always been equally well understood; what was obscure and uncertain has been made more clear and certain. The existence of different conditions, circumstances, and wants, in different ages and countries, necessitated some change in the adjustment of the teaching to the varying surroundings. New duties arose from new positive legislation. Besides, the science of Christian morals is not a mere exposition of the moral precepts of the Gospel and of the positive legislation of the Church. Books have been written containing such an exposition in the very words of Scripture, like the *Speculum* of St Augustine, and the *Scintillæ* attributed to Venerable Bede,[1] but such as these are not works of moral theology. The science of moral theology arranges its subject-matter in an orderly and logical way; it shows the grounds and the reasons of the doctrine, it harmonizes part with part so as to form a compact and systematic body of doctrine. All this is the work of time and of many minds, and it admits of historical treatment. In the brief space at our disposal we propose to trace at any rate the chief stages in the development of Catholic moral theology. Our history may conveniently be divided into three periods; the first will embrace the age of the Fathers, the second that of the scholastics, the third will be the modern period.

Section I

The Patristic Period

The end for which Jesus Christ established his Church was the sanctification and salvation of souls. This end the Church was to obtain chiefly by preaching the Gospel which her Founder had revealed and by administering the sacraments which he had instituted.[2] Men were to be sanctified and prepared for eternity by holy living through the grace of God communicated to them principally by means of the sacraments. The Gospels contain a short summary of the general teaching of Jesus Christ; this is developed somewhat in certain directions in the other writings of the New Testament, but the preachers of the Word soon found it convenient to have by them brief summaries of the moral teaching of our Lord by itself. This need was met by such works as the *Didaché*,

[1] Migne, P.L. 88, 598.

[2] Matt. xxviii 19, 20.

or *Teaching of the Twelve Apostles*, composed about the end of the first century, and the *Pastor* of Hermas, written a little later. It would be utterly impossible to give even an outline of the ethical works of all the Fathers of the Church. Together they form a very voluminous and complete course of moral theology, and more than one such course has been put together by simply printing a consecutive selection of their works. Thus in 1791 an Italian priest, Angelo Cigheri, published at Florence his *Veterum Patrum Theologia Universa*, in thirteen volumes quarto, of which the three last are devoted to morals. A fairly complete catalogue of ethical works by the Fathers will be found in the indices of Migne's *Patrology*, arranged under the separate headings which figure in our modern manuals of moral theology. All that we can do here is to select a few typical works which exhibit the gradual development of the science of Christian ethics. The *Didaché* may be looked upon as the first handbook of morals which has come down to us, and it will be worth while to give a short analysis of its contents.

This first handbook of moral theology begins with the first general principle of ethics. All righteousness is summed up in the general precept to avoid evil and do good. The doing of good consists in the observance of the two great commandments of love for our God and for our neighbour. The golden rule is added to the statement of the general first principles of morality. "There are two ways," we read, "one of life and one of death; and there is much difference between the two ways. Now the way of life is this: First thou shalt love God that made thee; secondly, thy neighbour as thyself; and all things whatsoever thou wouldest should not happen to thee, neither do thou to another." The rest of the first chapter is occupied with a development of the precept of love for our neighbour, expressed for the most part in the language of the Sermon on the Mount. The second chapter enumerates some of the principal negative duties toward our neighbour. A similar enumeration occupies the third chapter, but here there is an attempt to give the reason for the different prohibitions, as, for example: "Be not prone to anger, for anger leads to murder; neither a zealot, nor contentious, nor passionate, for from all these things murders are begotten." In the fourth chapter are set down the duties towards preachers of the Gospel, of making peace, of judging righteously, of almsgiving; duties toward parents, children, servants; of avoiding hypocrisy, and not adding to or taking away from

the precepts of the Lord which they had been taught. The chapter concludes with, " This is the way of life."

The fifth chapter consists of a long enumeration of sins, and ends with the prayer, " May ye be delivered, children, from all these."

In the sixth chapter there is a warning against being led away from this teaching by anyone, for such a one would not teach according to God. A distinction is drawn between what is required for perfection and what is morally possible. The faithful are bidden specially to beware of what has been sacrificed to idols.

A brief instruction on Baptism occupies the seventh chapter, and in the eighth Christians are taught to fast on Wednesdays and Fridays, so that their fasting-days may be different from those of the Jews, who fasted on Mondays and Thursdays. They are told to say the Our Father three times a day. The ninth and tenth chapters give instructions on the celebration of the Eucharist, while the two following deal with the way in which prophets and strangers should be received. The thirteenth chapter prescribes the offering of firstfruits. In the next chapter the faithful are instructed to meet together on every Lord's Day, to offer the eucharistic sacrifice, after confessing their sins, so that their sacrifice may be pure. Enemies, too, should be reconciled lest the sacrifice be defiled. It was of this sacrifice that Malachias prophesied. The fifteenth chapter deals with the election of bishops and deacons and the respect which is due to them. The duties of fraternal correction, of prayer and almsdeeds, are enjoined as they are contained in the Gospel of our Lord. The last chapter contains an exhortation to watch, and inculcates the necessity of faith and perseverance, for Antichrist will appear and seduce many. The treatise concludes with a short description of the signs of the last day.

The whole of the second book of the *Pastor* of Hermas is a document of early Christian moral teaching very similar to the *Didaché*, but more attempt may be observed in it to show the connection between one prohibition and another, and to give reasons and motives for their observance.

A great advance is observable in the catechetical works of Clement of Alexandria. They are almost exclusively devoted to moral teaching, which their learned author illustrates and confirms by constant quotations from the Greek classical authors. With an enthusiastic and personal love for Jesus Christ, and faith in his teaching as a divine and full revelation

of the truth to men, he combines a high esteem for reason and philosophy. According to Clement, philosophy was the pedagogue of the pagan world, preparing it for Christ and leading it to him, as the law did the Jews. Philosophy is the handmaid of theology, he says, and the dictates of reason are but the promptings of the Word which illuminates every man that cometh into the world. This, of course, is but a development of ideas which we find in the Scriptures of the Old and New Testament, and it is a natural consequence of Christian teaching concerning God and his relation to man and to the world. It is a very superficial view which regards the action of Clement and other Fathers in the use they made of reason and philosophy as a corrupting influence in Christian teaching. With them, as with the scholastics in the Middle Ages, that action was the necessary result of a firm faith in the Gospel message, and the natural desire to understand it and penetrate its full meaning as far as possible. It was *Fides quaerens intellectum*, the moving spirit of Catholic theology from the beginning. Better than any lengthy exposition, an extract or two from Clement will show how far the science of moral theology had progressed at the end of the second century. The following extract is taken from an apologetic work entitled *An Exhortation to the Heathen.*

"Wherefore, since the Word himself has come to us from heaven, we need not, I reckon, go any more in search of human learning to Athens and the rest of Greece, and to Ionia. For if we have as our teacher him that filled the universe with his holy energies in creation, salvation, beneficence, legislation, prophecy, teaching, we have the Teacher from whom all instruction comes; and the whole world, with Athens and Greece, has already become the domain of the Word. For you, who believed the poetical fable which designated Minos the Cretan as the bosom friend of Zeus, will not refuse to believe that we who have become the disciples of God have received the only true wisdom; and that which the chiefs of philosophy only guessed at, the disciples of Christ have both apprehended and proclaimed."[1]

The next extract, from the *Pædagogus*, a work containing instructions for recent converts, shows the place which reason or conscience holds in Christian ethics.

"Everything that is contrary to right reason is sin. Accordingly, therefore, the philosophers think fit to define the most generic passions thus: lust, as desire disobedient to reason;

[1] *Exhortation to the Heathen*, c. 11.

fear, as weakness disobedient to reason; pleasure, as an elation of the spirit disobedient to reason. If, then, disobedience in reference to reason is the generating cause of sin, how shall we escape the conclusion that obedience to reason—the Word—which we call Faith, will of necessity be the efficacious cause of duty? For virtue itself is a state of the soul rendered harmonious by reason in respect to the whole life. Nay, to crown all, philosophy itself is pronounced to be the cultivation of right reason; so that, necessarily, whatever is done through error of reason is transgression, and is rightly called sin."[1]

The *Stromata*, or *Miscellanies*, are a collection of materials for the ethical instruction and training of the Christian theologian. The philosophical and theological detail to which Clement descends in the treatment of his subject may be illustrated by an extract from the fourteenth chapter of the second book of the *Stromata*, on the different ways in which an act may be involuntary. The matter, of course, belongs to the treatise on Human Acts, sometimes said to be the last treatise which was added to our manuals of morals.

"What is iunvoluntary is not matter for judgement. But this is twofold—what is done in ignorance, and what is done through necessity. For how will you judge concerning those who are said to sin in involuntary modes? For either one knew not himself, as Cleomenes and Athamas, who were mad; or the thing which he does, as Aeschylus, who divulged the mysteries on the stage, who being tried in the Areopagus was absolved on his showing that he had never been initiated. Or one knows not what is done, as he who has let off his antagonist, and slain his domestic instead of his enemy; or that by which it is done as he who in exercising with spears having buttons on them, has killed someone in consequence of the spear throwing off the button; or knows not the manner how, as he who has killed his antagonist in the stadium, for it was not for his death but for victory that he contended; or knows not the reason why it is done, as the physician who gave a salutary antidote and killed, for it was not for this purpose that he gave it, but to save."[2]

As yet no attempt had been made in the Church to write a systematic treatise of morals by reducing the various virtues and vices to logical order under appropriate general principles. This step was taken by St Ambrose at the end of the fourth century. This great Father and Doctor of the Church com-

[1] *Pædagogus*, i, c. 13. [2] *Stromata*, ii, c. 14.

posed his work *De Officiis* for the instruction of the clergy of his church of Milan. He expressly tells us that he followed Cicero's work with the same title as his pattern. Cicero wrote his book for the instruction of his son; St Ambrose desired to write for the instruction of his spiritual children. Although he followed Cicero closely in the arrangement and treatment of the matter, yet he never loses sight of what appears to have been the chief motive that he had in view in the composition of his work—namely, to demonstrate the superiority of Christian over pagan ethics.

The work is divided, like Cicero's, into three Books. In the first he treats of what is honourable and dishonourable. He points out that the philosophic distinction between ordinary and perfect virtue has its counterpart in the Gospel, which distinguishes between what is matter of strict precept and of counsel. Certain elementary duties, as those toward parents and elders, are touched on, and then follows a discussion on the four cardinal virtues. The second Book treats of what is expedient with reference to eternal life. The third Book treats of what is honourable and expedient in conjunction, and the author has no difficulty in reconciling these conflicting principles according to Christian teaching. "For," he writes, "I said that nothing can be virtuous but what is useful, and nothing can be useful but what is virtuous. For we do not follow the wisdom of the flesh, whereby the usefulness that consists in an abundance of money is held to be of most value, but we follow the wisdom which is of God, whereby those things which are greatly valued in this world are counted but as loss. For this *κατόρθωμα*, which is duty carried out entirely and in perfection, starts from the true source of virtue. On this follows another or ordinary duty. This shows by its name that no hard or extraordinary practice of virtue is involved, for it can be common to very many."[1] This principle of perfection is then applied to the pursuit of gain and other questions.

A very famous book on morals, somewhat more restricted in scope than the *De Officiis* of St Ambrose, is the *Pastoral Care* of St Gregory the Great. This, together with the same author's *Morals* on Job, was a favourite textbook in the Middle Ages. It lays down the qualities required in those who have the cure of souls, how they themselves should live, how they should instruct and admonish those subject to their authority. The book was brought to England by St Augustine and trans-

[1] *De Officiis*, iii, c. 2.

lated into English by King Alfred for the benefit of the bishops and priests of his kingdom.

A word must here be said on Christian asceticism, which has been so utterly misunderstood and misrepresented by such writers as Lecky and Harnack, and whose true relation to Christian morals is so seldom perceived by non-Catholic authors.

Christ our Lord expressly taught that renunciation of self, of the world with its riches and pleasures, was in a certain sense a necessary condition of discipleship. This renunciation, however, admitted of different degrees, as is also plain from the Gospels. Some were called only to spiritual poverty and detachment, and these hoped to save their souls by remaining in the world without being of it. Outwardly they lived much like other people, but their affections were detached from this world and centred on God and eternity. They went to heaven by the way of the commandments. Others, on the contrary, voluntarily embraced the counsels of poverty, chastity, and obedience, given by our Lord to those who were called, and who felt that they had the spiritual strength to follow the call. They made a special profession of following the counsels, and were assigned a place of honour in the Christian assemblies, but at first they seem to have lived in the bosom of their families. They soon, however, began to find it very difficult to persevere in their adopted form of life while exposed to the distractions and temptations of the world, and this, together with the violence of the persecutions, drove them into the desert. There they lived at first solitary lives as hermits, but before long they began to come together and put themselves under the authority of some ancient Father of the desert renowned for his prudence and sanctity. Their aim was to subdue their passions and ascend the heights of Christian perfection. The task is notoriously difficult both in theory and in practice, and many mistakes were made. The Church had not yet drawn up her minute code of laws for the regulation of religious life. Those writers, however, who industriously pick out the mistakes and the exaggerations of indiscreet fervour, and piece them together to produce a picture of Christian monachism and asceticism, only succeed in producing a caricature. To convince one's self of this it is sufficient to dip into the *Institutes of Monasteries* and the *Conferences* of Cassian, who was in the middle of a long life in the year 400. In the twelve Books of his *Institutes* Cassian describes the dress of the monks, their method of singing the divine office, the training of postulants and

novices, and then he devotes the last eight Books to a minute account of the nature, causes, and remedies of the eight principal vices which bar the way to the summit of Christian perfection. He maps out every portion of the pilgrim's progress to his heavenly country, and shows what dangers and obstacles he will meet by the way. In brief, he says, progress toward perfection begins with the fear of God, from which arises a salutary sorrow for sin, which leads to renunciation and contempt of the world; this begets humility, from which springs mortification of the will, and by this all vices are subdued and extirpated. Then all virtues begin to flourish in the soul, which thus arrives at purity of heart and the perfection of apostolic charity.[1]

The vices to be overcome are classed under eight different heads by Cassian, and he says that the classification was admitted by all.[2] These principal or capital vices are typified by the seven people, whom the Israelites were commanded by God to extirpate when they came into the land of promise. Egypt makes the eighth, from which they had been delivered, and which, Cassian says, typifies gluttony. From this vice the monk is indeed delivered by his abandoning the world for the desert, but he may not extirpate it altogether; he should aim only at curbing its excesses. Gregory the Great adopted in substance the teaching of Cassian on the capital vices, but by making pride the queen of all the rest, and placing it in a category by itself, the other seven became the seven deadly sins which with their daughter vices were so famous in the literature of the Middle Ages, and figure in the books of morals and in the catechisms of Christian doctrine to the present day.

To show how conservative the Catholic tradition has been, even in the expression of doctrine, I will give the following passage in St Gregory's own words:

" Ipsa namque vitiorum regina superbia cum devictum plene cor ceperit, mox illud septem principalibus vitiis, quasi quibusdam suis ducibus devastandum tradit. Quos videlicet duces exercitus sequitur, quia ex eis proculdubio importunae vitiorum multitudines oriuntur. Quod melius ostendimus, si ipsos duces atque exercitum specialiter, ut possumus, enumerando proferamus. Radix quippe cuncti mali superbia est, de qua, Scriptura attestante, dicitur: Initium omnis peccati est superbia (*Ecclus.* x 15). Primae autem ejus soboles, septem nimirum principalia vitia, de hac virulenta radice proferuntur,

[1] *De Cœnobiorum Institutis*, lib. iv, c. 43.
[2] *Collatio* v, c. 18.

scilicet inanis gloria, invidia, ira, tristitia, avaritia, ventris ingluvies, luxuria. Nam quia his septem superbiae vitiis nos captos doluit, idcirco Redemptor noster ad spirituale liberationis proelium spiritu sepitformis gratiae plenus venit.

"Sed habent contra nos haec singula exercitum suum. Nam de inani gloria inobedientia, jactantia, hypocrisis, contentiones, pertinaciae, discordiae, et novitatum praesumptiones oriuntur. De invidia, odium, susurratio, detractio, exsultatio in adversis proximi, afflictio autem in prosperis nascitur. De ira, rixae, tumor mentis, contumeliae, clamor, indignatio, blasphemiae proferuntur. De tristitia, malitia, rancor, pusillanimitas, desperatio, torpor circa praecepta, vagatio mentis erga illicita nascitur. De avaritia, proditio, fraus, fallacia, perjuria, inquietudo, violentiae, et contra misericordiam obdurationes cordis oriuntur. De ventris ingluvie, inepta laetitia, scurrilitas, immunditia, multiloquium, hebetudo sensus circa intelligentiam propagantur. De luxuria, caecitas mentis, inconsideratio, inconstantia, praecipitatio, amor sui, odium Dei, affectus praesentis seculi, horror autem vel desperatio futuri generantur. Quia ergo septem principalia vitia tantam de se vitiorum multitudinem proferunt, cum ad cor veniunt, quasi subsequentis exercitus catervas trahunt. Ex quibus videlicet septem quinque spiritalia, duoque carnalia sunt."[1]

The *Conferences* of Cassian are represented by him as the teachings of celebrated abbots on various questions of the spiritual life. They are partly speculative, partly practical. There are twenty-four in all, each being divided into a greater or less number of chapters. These two works have provided an ample store of moral and ascetical doctrine for all subsequent Catholic writers on the subjects treated in them.

A large portion of moral theology is taken up with the duties arising from the positive legislation of the Church. In this legislation we have the practical application of Christian moral principles to the varying requirements of time and place, and change and variety are here conspicuous. With the establishment of the Christian religion the positive precepts of the Mosaic law ceased to be binding, but the Church received from her divine Founder authority to make new laws for the sanctification and salvation of her children. The Apostles used this legislative authority, as we see from the Epistles of St Paul, especially from those to Timothy and Titus, and within twenty years after the Ascension we find them legis-

[1] *Moralium*, lib. xxxi, c. 45.

lating in the Council of Jerusalem on the disputed question of legal observances. The decree which we have in the Acts[1] was a true positive law imposing a new obligation on the faithful concerned, as long as the peculiar circumstances of the time rendered its observance desirable and necessary.[2] This council of the Apostles formed the type and pattern for the oecumenical and provincial councils of the Church which were to be held in the future. Innumerable laws and regulations have been enacted by these, affecting Catholic life, discipline, and worship. The bishops, too, as successors of the Apostles, have continued in all ages to exercise the legislative authority committed by them to God and the Church. The Roman Pontiffs, especially, in the exercise of their jurisdiction over the whole Church in succession to Blessed Peter, have in all ages made wise laws for the peace and prosperity of the Christian people. As instances of this action of the Popes in the early centuries may be mentioned St Clement's first epistle to the Corinthians in the first century, St Victor's decision about the observance of Easter in the second century, St Stephen's about the baptism of heretics in the third, and similar action on the part of Popes Liberius, Damasus, and Siricius. Subsequently papal decisions became frequent and notorious. Collections of the decisions issuing from all these sources of positive law began to be made in very early times. Of these some have survived the ravages of time. The *Didascalia of the Apostles* may, in the judgement of the learned, be ascribed to the first half of the third century, and the so-called *Constitutions of the Apostles*, together with the *Canons of the Apostles*, to the early part of the fifth century. The materials of which these collections are composed are, of course, still more ancient. At the beginning of the fourth century the decrees of the councils were collected and arranged at first in chronological order in the East. At the beginning of the sixth century systematic collections arranged under suitable titles began to appear. Of these early collections of canons the most celebrated is that of John the Scholastic. In the West, Dionysius Exiguus made his translation of Greek canons into Latin about the year 500. A copy of this collection was presented by the Pope to Charlemagne when he was in Rome, and he caused it to be received and approved by the clergy of his empire in 802 at the great Council of Aix la Chapelle. Collections of Church laws continued to grow in number and

[1] Acts xv 28, 29.
[2] It ceased to bind in the Latin Church about the ninth century.

in bulk until in the twelfth century the monk Gratian issued his *Decretum*, which became the most famous of them all, and still forms the first volume of the *Corpus Juris Canonici*. It contains some 4,000 decisions on law and morals taken from the decrees of Popes, the canons of councils both general and particular, the opinions of the Fathers, and even from the civil law.

No attempt, of course, can be made in this short sketch to trace the varying phases through which the innumerable positive laws of the Church have passed. It will be sufficient for our purpose to trace in outline those chief precepts which bind all Catholics and which are specially known as the precepts of the Church. They are usually reckoned six in number: the due observance of Sundays and feast-days, the days of fasting and abstinence, confession and Communion, the support of pastors, and the prohibition of marriage within certain degrees of kindred and of its solemnization at certain times of the year.

The observance of the Sunday and its substitution for the Sabbath appears to be due to apostolic institution. There are traces of it in the New Testament; in the *Didaché* the faithful are bidden to come together on the Lord's Day, as it was called even then in honour of the Resurrection, and offer the eucharistic sacrifice after confessing their sins. In the second century the custom of observing the Lord's Day was universal throughout the Church. The chief duty to be performed on that day was to hear Mass. Very soon particular provincial laws began to be enacted urging the obligation and imposing penalties on transgressors. At the beginning of the fourth century the Council of Illiberis in Spain decreed that anyone who might be absent from Mass on three successive Sundays should be deprived of Communion. The Council of Agde at the beginning of the sixth century prescribed that all were to hear an entire Mass on Sunday and not leave until after the blessing of the priest on pain of a public reprehension by the bishop.

It was natural that when Sunday became the Christian Sabbath it should be kept much in the same way as the Jews kept their Sabbath. While knowing from the teaching of our Lord himself that pharisaic exaggeration was to be avoided in this matter, and from St Paul that the sabbatical rest was no longer of obligation, still St Caesarius of Arles in the sixth century expressly says that the Doctors of the Church decreed to transfer all the honour of the Sabbath to the Lord's Day.

The very necessity of hearing Mass on that day made a certain abstention from work also necessary. Tertullian testifies to the Christian custom of his day in this respect. Constantine prescribed that judges and artisans in towns should abstain from work on the Sunday, but that agriculture should be allowed on account of necessity. The strictness with which the Sunday repose was observed varied somewhat according to time and place in the period with which we are dealing.

Besides the Sunday other feast-days began gradually to be observed in the same manner by hearing Mass and abstaining from servile work. Easter and Pentecost were assigned to movable Sundays, but the days on which renowned martyrs suffered for the Faith, those on which churches were dedicated, Ascension Day, Christmas Day, and the Epiphany, were soon added to the list. The letter of the Church of Smyrna concerning the martyrdom of St Polycarp in the middle of the second century expresses the intention of celebrating the anniversary of the day of martyrdom with joy, both in memory of those who had suffered and as a preparation for those who survived.[1]

As the Christian Church took over the Jewish Sabbath but changed the day on which it was observed and rejected the exaggerations of the Pharisees in its observance, so, too, it adopted the Jewish practice of fasting at stated times. As we have seen from the *Didaché*, the fast of Monday and Thursday was changed into one on Wednesday and Friday. The obligation of fasting on all Wednesdays and Fridays ceased almost entirely about the tenth century, but the fixing of those days by ecclesiastical authority for fasting, and the desire to substitute a Christian observance at Rome for certain pagan rites celebrated in connection with the seasons of the year, seem to have given rise to our Ember Days. In the time of St Leo, in the middle of the fifth century, the Ember Days were a settled institution, though the time at which they fell varied somewhat at different times and in different places.

The earliest indication that we have of the fast of Lent is contained in a short extract from Irenaeus which has been preserved for us by Eusebius.[2] Writing to Pope Victor about the middle of the second century, St Irenaeus says that the controversy in the East was not merely about the proper time of celebrating Easter but also about the manner of fasting. "For some think," he says, "that they ought to fast only one

[1] *Cf.* A. Villien, *Histoire des Commandements de l'Église*, 1909.
[2] *Historia Ecclesiastica*, v, c. 24.

day, some two, some more days; some compute their day as consisting of forty hours night and day; and this diversity existing among those that observe it is not a matter that has just sprung up in our times, but long ago among those before us, who, perhaps not having ruled with sufficient strictness, established the practice that arose from their simplicity and inexperience, and yet with all these maintained peace, and we have maintained peace with one another; and the very difference in our fasting establishes the unanimity of our faith." At the time this was written the Lenten fast was obviously very short, and there was no uniformity even in its duration. Tertullian, fifty years later, refers to the Lenten observance as the fulfilment of the words of our Lord: "But the days will come when the bridegroom shall be taken away from them; then shall they fast in those days."

The first allusion to a period of forty days' fast occurs in the fifth canon of the Council of Nicaea (325). In the time of St Leo in the fifth century the period was sufficiently well established to be referred by him to apostolic institution. The period was six weeks, but omitting Sundays the actual fasting days were only thirty-six in number. The four days before the first Sunday of Lent were added sometime in the seventh century. The fasts assigned to certain vigils arose from the practice of the early Christians of assembling on the eve of a feast and spending the night in prayer, fasting, and reading the Scriptures. By degrees Matins took the place of the night office, and the vigil office was moved back to the Saturday morning, as we see to this day from the morning office of Holy Saturday. The fast was thus prolonged through the Saturday till after the morning office of the feast of the next day.

The fast which used to be observed on the rogation days took its rise in France at the close of the fifth century, and by degrees spread to other Churches. The interrupted fast of Advent was introduced as a preparation for Christmas toward the end of the fourth century. The manner of fasting has varied greatly at different times and in different places. At first the fast seems to have been absolute and continuous. During the days of the bridegroom's absence the faithful neither ate nor drank anything. When the period was lengthened such a total fast became impossible, but at least in the East food was restricted on fast days to one meal of bread, salt, and water, taken in the evening, or at least not before three in the afternoon. In the time of St Gregory fish was

allowed at the single meal in the West. Flesh meat was never allowed on fasting days.

The essence of fasting is still placed by theologians in the single meal, but many relaxations have crept in by degrees. The monks while listening to a *Collatio* of Cassian before going to bed introduced the practice of drinking an acidulated liquor called *posca*. By degrees fruits and lighter kinds of food in limited quantity were added, and when about the thirteenth century the full meal began to be taken at twelve midday, the evening collation became an established practice.

In the thirteenth century it was an accepted principle that liquid does not break the fast, and this became the source of another relaxation. A little wine, or coffee, or chocolate, was taken sometimes in the morning, with candied fruits (*electuaria*) on occasion. The practice was not condemned when the Sacred Penitentiary was asked about it in 1843, provided that the solid food taken then did not exceed two ounces in weight.

At first all seem to have fasted except children and those who were sick. St Thomas's opinion that those who are still growing are not bound to fast, and that in general the period of growth lasts till the completion of the twenty-first year, has prevailed. Exemptions in favour of workmen and others were soon admitted, and toward the close of the Middle Ages dispensations from the law of fasting began to be granted. The Lenten indult was an established custom before the new Code came into force.

The precept of abstinence from flesh meat which is still observed on Fridays is a survival of the obligation of fasting on that day which obtained in the primitive Church. As we have seen, the *Didaché* prescribed fasting on all Wednesdays and Fridays, and to this fast all the faithful except mere children and the sick were formerly bound. About the tenth century the obligation of the Friday fast was reduced to one of abstinence from flesh meat, and the Wednesday fast, after being similarly mitigated, gradually disappeared altogether.

While in the East Saturday was observed as a festival in honour of the creation,[1] at Rome and in other Churches of the West it began in early times to be observed as a fasting day. On account of the difference of discipline on this point great difficulties arose in the fourth century, as we know from the correspondence of St Augustine and St Jerome. St Ambrose said that he kept festival on Saturday when he was at

[1] Apostolic Constitutions, vii, 23.

Milan and a fast when at Rome, and he advised St Augustine to follow the same rule. About the eleventh century the Saturday fast was reduced to an obligation of abstinence, and this was the common law of the Church until the new Code of Canon Law came into force. A dispensation from abstinence on Saturdays, the feast of St Mark, and on Rogation Days was granted for England by a rescript of Propaganda, May 29, 1830.

The Sundays in Lent were never observed as fasting days, but they early became days of abstinence as they remained till the new Code came into force on May 19, 1918.

Annual confession and Communion was first made a positive universal law of the Catholic Church in the Fourth Lateran Council (1215). As we know from the Gospel of St John,[1] both confession and Communion were prescribed by our Lord, but he determined neither precept in detail. The practice of the different Churches in the early ages was various in respect to both precepts. We will first trace in outline the history regarding the precept of annual Communion.

From the earliest times, as we have seen, Mass was celebrated for the assembled faithful on Sundays, and all who were present appear to have received Holy Communion. In some places it was the practice for the faithful to take home with them consecrated particles and communicate themselves therewith out of Mass. Many at Rome, in Spain, and in Africa received Communion daily. This was a common practice at the end of the fourth century, as we learn from the letters of St Jerome and St Augustine. The latter interprets the daily bread for which we ask in the Lord's Prayer as Holy Communion. The Council of Agde (506) decreed that those who did not communicate at least on the feasts of the Nativity, Easter, and Whit-Sunday were not to be reckoned as Catholics. In subsequent centuries this became a general rule in the Western Church; in the East, according to Theodore of Canterbury, the law was much stricter. The Greeks, he says, both laity and clerics, communicate every Sunday, and anyone who omits to do so on three Sundays is excommunicated. A synod held (747) at Cloveshoe in England prescribed that innocent youths and those in whom years had cooled the ardour of passion should be exhorted to communicate very frequently. A synod held under St Patrick in the fifth century decreed that the Eucharist was to be received at all events at Easter, and that anyone who neglected this duty was not a member of the

[1] John vi 54.

Church. Robert Pullen, an Englishman who wrote in the middle of the twelfth century, tells us that in his day some communicated more frequently, others less so, but that even laymen followed the rule of the Fathers and communicated at least three times a year. So that when the Lateran Council established the universal law that all who had come to years of discretion were bound to communicate at least at Easter, it made no new rule; it merely enforced by universal statute the least that was expected of anyone who called himself a Catholic.

The precept of annual confession is intrinsically connected with that of Easter Communion both in the Church's legislation and in its own nature. For, as the Catechism of the Council of Trent teaches,[1] the power of order, although primarily it refers to the consecration of the Eucharist, yet also comprises all that is necessary to dispose the faithful to receive the Eucharist worthily and profitably. It comprises, then, the power to forgive sins, inasmuch as no one who is conscious of mortal sin may receive Holy Communion without previous confession and absolution. The Council of Trent[2] teaches that the words of St Paul, "Let a man prove himself," have always been understood in the Church of the necessity of sacramental confession and absolution before Holy Communion when there is consciousness of mortal sin. The law of the Lateran concerning annual confession and Communion is thus one law, confession being ordinarily a necessary preparation for Holy Communion in those who rarely communicate. That the Church always understood this is witnessed to by Alcuin in the eighth century,[3] by St Leo in the fifth,[4] St Augustine in the fourth,[5] and St Cyprian in the third.[6] We have the same conjunction of confession and Communion in the sentence of the *Didaché:* "But on the Lord's day do ye assemble and break bread, and give thanks, after confessing your transgressions, in order that your sacrifice may be pure."[7] In all probability the confession here spoken of should be interpreted as meaning sacramental confession to a priest. The Council of Trent, then, was justified in saying that before receiving Holy Communion it had always been considered

[1] Pt. ii, c. 7, q. 6. [2] *Supra*, p. 102.
[3] De Psalmorum Usu, P.L., ci, 499.
[4] Epist. 108, P.L., liv, 1011.
[5] Serm. 278, P.L., xxxviii, 2273.
[6] Epist. 10, P.L., iv, 254; Epist. ii, *ib.* 257; De Lapsis, xvi, *ib.* 479.
[7] C. xiv.

a duty to go to confession when there was consciousness of mortal sin. In the fifth or sixth century a practice sprang up which was the forerunner of the Lateran law of annual confession. At the beginning of Lent public penance was imposed on those who had been guilty of great and notorious crimes. In some of the Penitential Books[1] the priest is bidden to invite all who are conscious of mortal sin, and even all who by any sin whatever have soiled their baptismal robe, to make humble confession to their own priest on Ash Wednesday, and accept the penance enjoined according to the canons. If there was any special reason for granting absolution at once, that was done, otherwise absolution was deferred till Maundy Thursday, when, the penance having been performed, the penitent was absolved and admitted to Communion. This was a mitigation of the earlier discipline of some Churches, especially in the East, according to which public penance sometimes lasted for years.[2] The name of Shrove Tuesday and the custom of receiving ashes on the head on Ash Wednesday, still remind us of the old discipline of the Catholic Church. It was natural, then, that when the Church made it obligatory on all to receive Holy Communion at least every Easter, it should also impose the obligation of annual confession. The law indeed does not indicate Easter as necessarily the time for the annual confession, but in practice it follows the time for the annual Communion. Originally the annual confession had by law to be made to the parish priest or to the bishop of the penitent, but for centuries it has been lawful to make it to any priest who has faculties for hearing confessions in the place.

The faithful are bound by natural and divine law according to the teaching of St Paul[3] to contribute to the support of their pastors. For some centuries the revenues of the Church derived from the offerings of the faithful and from other sources constituted one fund, and this was administered by the bishop. The support of the poor, the maintenance of public worship, as well as the support of the clergy and other needs, were all supplied from the common fund. According to a decretal of Pope Gelasius (501) the Church revenues were to be divided into four portions, one for the bishop, another for the clergy, a third for the relief of the poor and strangers, the fourth for the Church fabrics. In his celebrated

[1] Schmitz, *Bussbücher*, i, 775.
[2] Duchesne, *Christian Worship*, p. 435.
[3] 1 Cor. ix; Gal. vi 6.

answers to St Augustine, Gregory the Great tells the first Archbishop of Canterbury that as he was a monk he did not need a separate portion, and should be content to share in common with his clergy. For several centuries no positive law of the Church was needed to compel the faithful to do their duty in this matter. The Fathers who occasionally urge the obligation are content to appeal in support of it to the teaching of St Paul or to the law of tithes under the Mosaic dispensation. The Penitential attributed to St Theodore enjoins that the custom of the province should be observed relative to contributions to the Church, but that the poor were not to be subjected to violence for the sake of tithes or other matters. Positive ecclesiastical laws, however, began to appear both on the Continent and in England in the eighth century. Thus the seventeenth article of the legatine council held in England by the authority of Pope Adrian I (785-787) contained the following provision: "Wherefore also we solemnly lay upon you this precept, that all be careful to give tithes of all that they possess, because that is the special part of the Lord God; and let a man live on the nine parts, and give alms." At first there was some variety in the appropriation of tithes, but when the parochial system was introduced, between the tenth and thirteenth century, the appropriation of tithes to the parish priest became the settled rule. In modern times, at least in English-speaking countries, the offerings of the faithful constitute almost the only source of Church revenues as they did in the early ages of Christianity, and their apportionment and distribution are regulated by special laws.[1]

As marriage was raised to the dignity of a sacrament by Christ our Lord, and the Church alone has jurisdiction over the administration of the sacraments, it follows that Christian marriage is subject exclusively to the laws of God and of the Church. There are several passages in the Epistles of St Paul[2] which show that the Church was conscious of her authority in this matter, and that she used it from the earliest times. St Ignatius in his letter to St Polycarp says that it is proper that Christians should contract marriage according to the judgement of the bishop, and Tertullian asserts that marriages which were contracted without being previously notified to the Church were in danger of being considered as no better than adulteries and fornications. The history of the many laws relating to Christian marriage is too large a subject

[1] Constitution of Leo XIII, *Romanos Pontifices*.
[2] 1 Cor. v, vii; 2 Cor. vi 14.

to be treated here even in outline. We will confine ourselves to the impediments of consanguinity and close time.

The natural and divine law prohibits marriage in the first degree of the direct line, and most probably in all degrees indefinitely in the same line. In the collateral line, also, it most probably forbids marriage at least in the first degree. With respect to further degrees in the collateral line the Church adopted the Mosaic legislation, and there are no traces of her having exercised further the independent power which she certainly possessed to enlarge or restrict the limits of kindred before the fourth or fifth century. The Council of Epaon (517) forbade marriages between second cousins, Gregory II (721) prohibited marriage with relations in general, and from the eighth to the eleventh century the prohibition was extended to the seventh degree according to the canonical mode of reckoning. The Fourth Council of Lateran (1215) restricted the prohibition to the fourth degree, and the new Code restricts it to the third.

As the solemn celebration of marriage is not in keeping with penitential exercises, a council of Laodicea in the fourth century forbade the celebration of marriage during Lent. Subsequently the solemnization of marriage was forbidden from Septuagesima Sunday till the octave of Easter, during three weeks before the feast of St John Baptist, and from Advent till after the Epiphany. There was a dispute as to the three weeks before the feast of St John Baptist, and Clement III, at the end of the twelfth century, decided that the period was to be interpreted as extending from the Rogation Days till the Sunday after Pentecost. The Council of Trent[1] decreed that close time for the solemnization of marriage was to extend from Advent till after the Epiphany, and from Ash Wednesday till after Low Sunday, which the Code has altered as above (p. 212).

We must not leave this first period in the history of moral theology without saying something about the penitential books which began to appear in the sixth century and subsequently became very numerous. They were intended as a help to bishops and priests in their duty of imposing canonical penances on sinners and reconciling them to God and the Church. At first they were little more than lists of sins with the appropriate canonical penance annexed to each sin. The quality and length of penance assigned were derived from the councils or from the canonical letters of St Basil,

[1] Sess. xxiv, c. 10.

St Peter of Alexandria, St Athanasius, and other Fathers of the Church. Afterward chapters were added containing short moral rules on a great variety of subjects, the method of receiving and dealing with penitents, and the method of reconciling them. They are of importance in the history of moral theology as furnishing a standard by which the malice of various transgressions was measured according to a great variety of circumstances. They fell into disuse with the gradual cessation of public penance in the Church.

Section II

The Scholastic Period

It is not possible to indicate any particular year when the scholastic period began. We may say that the patristic period closed with the death of St Bernard, the last of the Fathers, in the year 1153. Many of the characteristics of scholasticism, however, and especially the application of philosophy to the exposition and defence of theology, are conspicuous in the works of many of the Fathers. In their work, too, of systematizing theology the schoolmen had many predecessors among the Fathers, and especially St John Damascene and St Isidore of Seville. Nor is the common assertion that the Fathers favoured Platonism while the scholastics adopted Aristotelianism quite warranted by facts. Clement of Alexandria especially, and other Fathers as well, were eclectic as philosophers, and borrowed what they thought was true from any and every source. Still we may for practical purposes say that scholasticism began in the twelfth century. Then it was that the growth and development of theology began afresh. It had been interrupted for seven hundred years by the necessity of civilizing the barbarians who had broken up the Roman Empire and settled in its territories. From this time moral theology has come down to us in two distinct channels. Peter Lombard may be looked upon as the fountain-head of the first stream, and St Raymund of Pennafort of the second.

Peter Lombard wrote his work on the Sentences between the years 1145 and 1150. He therein treats of the whole of theology, both dogmatic and moral. He wished to counteract the rationalizing tendencies which as a pupil of Abelard he had noticed in the schools of Paris. To the various and erroneous views which the spirit of rationalism had introduced, Peter opposed the traditional doctrine handed down in the writings of the Fathers. After much consideration, as

he tells us, he found a guiding principle for the distribution and ordering of the subject-matter of theology in a sentence of St Augustine. Christian revelation, contained in the Holy Scriptures, has for its subject-matter either things or signs. Under signs come the sacraments, and things are either such as we have fruition of, or such as we use, or such as we both use and enjoy by fruition. Under the first head comes God, one in nature and three in person. Under the second come all created things, the angels, man, his end, fall, and redeeming grace. Under the third, the incarnation, faith, hope, charity, the seven gifts of the Holy Spirit, the Ten Commandments. The whole matter of theology is thus systematically arranged in four Books. Each Book is divided into Distinctions, devoted to some special point on which the traditional doctrine is laid down by quoting appropriate extracts (*Sententiae*) from the works of the Fathers. Apparent or real differences of opinion are noted and as far as possible reconciled with each other. Although Hugo of St Victor, Robert Pullen, and other theologians had previously composed similar books of Sentences, yet the work of Peter Lombard soon eclipsed them all in the welcome that it received. It remained the recognized text-book of theology until the end of the sixteenth century, when its place was taken by the *Summa* of St Thomas. Nearly all the great scholastics wrote Commentaries on the *Sentences* of Peter Lombard, developing, illustrating, defending, and sometimes correcting the doctrine which they found there, especially from the speculative point of view. In these Commentaries and in the Summas of scholastic theology we have a most abundant and valuable source of the speculative side of Christian ethics.

To meet the more practical and concrete needs of the confessor, St Raymund of Pennafort composed his *Summa de Pœnitentia et Matrimonio* about the year 1235. He, also, merely collected and systematized the abundant material which had been left by his predecessors. He had no more intention of introducing changes into the traditional doctrines of Christianity than had Peter Lombard. But as his aim was not speculative but practical, he drew his material especially from Gratian's *Decretum*, from the decisions of Popes and the councils of the Church, as well as from the Fathers. The work *De Pœnitentia* is divided into three Books. In the first Book sins against God are treated of, in the second sins against one's neighbour, and in the third irregularities, dispensations, purgations, sentences, penances, and remissions. Each Book

is divided into Titles, which contain an orderly and logical exposition of some particular subject. Thus, in the first title on *Simony*, the sin is defined, the origin of the name is explained, the different kinds of simony are indicated, with the penalties incurred and the dispensations which may be obtained. Then follows a discussion of doubtful questions and cases. Finally some rules of law on the matter are laid down and explained.

The work of St Raymund was the first of those innumerable handbooks written for the training and use of the confessor especially from the practical and casuistical point of view. Although in the treatment of the different titles the work of St Raymund leaves little to be desired, yet it lacks something in orderly arrangement and in completeness. These defects were soon made good by others. A Friar Minor, of Asti, in the north of Italy, composed the *Summa Astensis* in the year 1317. In the Roman edition of 1728 it fills two volumes folio, and in its aim, in the matter which it contains, and in the method of treatment, it differs little from the handbooks of moral theology which are published at the present day. The matter is divided into eight Books. The first Book treats of divine and human law and contains the doctrine of the Ten Commandments. The second treats of virtues and vices, beginning with several titles devoted to human acts, voluntary and involuntary actions, to expounding in what the goodness or malice of actions consists, and merit. The cardinal and theological virtues and the sins opposed to them are explained in detail. The third Book contains the doctrine on contracts and last wills; the fourth that on the sacraments in general, and on Baptism, Confirmation, and the holy Eucharist. The treatise on Penance and Extreme Unction in the fifth Book contains also the doctrine on prayer, fasting, almsdeeds, restitution, and indulgences. That on Orders in the sixth Book treats also of churches and sacred vestments, ecclesiastical burial, parishes, prebends, tithes, of the various grades of the clergy and of religious and their obligations. Censures and ecclesiastical penalties occupy the seventh, and Matrimony the eighth Book.

The dogmatic treatment of moral theology reached its high-water mark in the second part of the *Summa* of St Thomas Aquinas. That marvellous production of genius has never been surpassed or even equalled as an exposition of the general principles of Christian ethics. Neither has the casuistic treatment of morals in general made much progress since the

thirteenth century. Of course, there have been numerous changes in discipline during the last six centuries, and these require to be noted in new moral treatises as they occur. There have also been some changes in theological opinion. As an illustration of such a change we may instance that concerning the use by superiors of knowledge gained from confession. St Thomas and scholastic theologians commonly held that a superior who knew from confession of a dangerous occasion of sin to one of his subjects might use his authority to remove his subject out of the danger, provided that thereby he violated no principle of justice nor made known to others the sin which had been confessed to him. This opinion is now quite obsolete, and it has been virtually condemned by the Holy See.[1] But in spite of some such changes in detail, the general assertion remains true that moral theology to-day is substantially what it was in the thirteenth or at the beginning of the fourteenth century. There is, however, one important exception to this general statement. That exception is due to the express formulation at the end of the sixteenth century of the doctrine of probabilism.

We must, however, be on our guard against exaggerating the importance of probabilism, and confounding it with moral theology in general. After all, probabilism is only concerned with the solution of doubtful questions. There is an immense body of moral doctrine which is certain and where probabilism or other similar theory of morals does not enter. There are also, it must be confessed, many doubtful questions, especially connected with the application of general rules to particular cases, and it is in the solution of these doubtful and disputed questions that probabilism is concerned. All Catholic divines state or take for granted the doctrine that it is sinful to act with a doubtful conscience, without making up one's mind that the action which is contemplated is morally right. This is the teaching of Holy Scripture: "All that is not of faith"—*i.e.*, done with the conscientious conviction that it is right—"is sin," says St Paul.[2] But if this be so, what are we to do in doubtful matters, where perhaps divines themselves disagree, and some teach that an action is right, while others assert that it is wrong? In such cases we can only act, according to the doctrine of St Paul, if we are able to make up our mind that the action is lawful and honest. How can this be done?

Before the close of the sixteenth century, when Bartholomew à Medina published his *Exposition* on St Thomas, there was

[1] *Supra*, p. 232. [2] Rom. xiv 23.

no commonly recognized method for forming one's conscience in doubtful matters. The *Summa Astensis* devotes the last title of the second Book to the subject of "Perplexities of Conscience." The author distinguishes perplexities of law from perplexities of fact. The former, he says, occur when there are two apparently contrary opinions about the lawfulness of an action, the latter when a man believes that in avoiding one sin he must perforce commit another. He has much to say about perplexities of fact, but about perplexities of law, which alone concern us here, he simply observes that they can be removed in whatever state a man may be, but he does not tell us how this may be done. He refers, indeed, to Alexander of Hales, who wrote before St Raymund of Pennafort, and who in the article of his *Summa* devoted to the subject of "Conscience" tells us that a perplexity of law is to be removed by the unction of the Holy Spirit, who teaches concerning all things.[1] St Raymund gives a more satisfactory rule and says shortly that a perplexity arising from a difference among Doctors is to be solved by reducing the contrary opinions to agreement, for there is no real but only apparent contradiction in law. This puts us on the right track; it tells us that for the solution of doubtful cases the theologians of the time followed the ordinary rules of legal interpretation, the chief among which was the rule of law which guided Gratian in the composition of the *Decretum* and Peter Lombard in his work on the Sentences, and which the Roman lawyers had expressed by saying that it is meet to make one law agree with another—*Conveniens est jura juribus concordare*.[2]

Although this was the chief rule of law to be followed when authorities differed, it was by no means the only one. Later authors, such as Angelus de Clavasio (1480), Sylvester Prierias (1516), and Navarrus (1560), give lists of the different rules of law to be applied to the solution of doubtful cases in different circumstances. We may take them from Navarrus, as they are substantially the same in all the authorities of the time. When there are different opinions among Doctors, says Navarrus in effect, that opinion should be preferred which is confirmed by custom, or grounded on a text of law, or which rests on an invincible argument. If none of these rules serves, then the common opinion should be followed, and that may be called a common opinion which six or seven approved authors adopt, though there may be fifty others who blindly follow each other

[1] *Summa*, ii, q. 120.
[2] L. unica, C., de inofficiosis dotibus.

like sheep against it, for weight and not number is mainly to be considered in such questions. If that rule does not suit the case, then the opinion should be chosen which is backed by more numerous authorities and reasons; then that which is more lenient, or which favours marriage, a last will and testament, liberty, a private individual against the State, the validity of an act, or the defendant in an action at law. If in none of these ways one opinion is better than the other, then that should be adopted which the greater number of theologians follow if the matter belong to theology, or canonists if it belong to canon law, or civilians if it belong to civil law. To these rules Navarrus adds the note that in the forum of conscience it is sufficient to choose as true the opinion of a man of virtue and learning.[1]

Sylvester Prierias tells us that all were agreed that when Doctors differed, a man might follow the opinion of one Doctor even though he was drawn to follow him by affection without subtle investigation into the grounds on which his opinion rested.

While the Fathers of the Church, such as Gregory Nazianzen, and the schoolmen with St Thomas solved particular cases of doubt in favour of liberty by applying the rule of probabilism that a doubtful law cannot impose a certain obligation, yet up to the time of Medina it was commonly held that in doubtful cases a man was bound to follow the opinion which seemed to him the better grounded or the more probable. The Dominican Bartholomew à Medina (1577) was the first to show that if it were a question of obligation, not of mere counsel, this was illogical. The more probable opinion may be the safer and better opinion, but we are not usually bound to take the safer or better way; we are at least allowed to take that which is good and safe. And a probable opinion is safe, for good and wise men see no sin nor danger of sin in it, else it would not be probable. So that a probable opinion may be followed even by one who knows and holds that the contrary opinion is more probable.

By these and other arguments Medina put probabilism on a firm basis, and the doctrine was at once received on all hands. It was the logical deduction from principles which all admitted, and so theologians of all schools accepted it at once, though some of them do not seem at first to have realized its far-reaching consequences. Dr. Hall, who published his work *De Quinquepartita Conscientia* in 1598, accepted and defended

[1] *Manuale Confessariorum*, c. 27, n. 288.

the new principle, but he placed it side by side with the older methods of forming one's conscience which he copied from Navarrus. Of these methods he remarks that they are so many different ways of forming a probable opinion. He did not fully realize, as it seems, that the new principle was universal, and rendered the use of the old rules to a great extent unnecessary in the forum of conscience. The same may be said of Azor, who published the first volume of his *Institutiones Morales* in the year 1600. Other theologians, however, such as Vasquez, Suarez, Salon, Laymann, soon realized the significance of the new method, and proceeded to explain, develop, and on certain points to limit its application. It was seen that it can only be applied where the sole question is whether an act is sinful or not; it may not be applied where an end must be attained and may not be placed in jeopardy, or where the validity of an act is in question, or where there is question of the certain right of another.

Section III

The Modern Period

Almost the whole modern period from the opening of the seventeenth century is occupied with the controversy about the right system of moral theology. Modern research has confirmed the historical accuracy of the account of the origin of this dispute which Fr. Antony Terill or Bonville prefixed to his work *Regula Morum*, published in 1676. Fr. Terill, S.J., was a learned and acute theologian who taught theology at the English College of the Society at Liège, now represented by Stonyhurst and St Beuno's. Besides his *Regula Morum* he published another work, *De Conscientia Probabili*, in 1668. He was a good and conscientious man, and had ample means of knowing the facts to which he testifies. According to Fr. Terill, until about the year 1638 practically all Catholic theologians of all schools accepted and taught probabilism. The only exception was the not very notable Italian Jesuit Comitolus, who published his *Responsa Moralia* in 1608. Comitolus taught probabiliorism and attributed the doctrine of probabilism quite falsely to what he calls the shameful lapse of Armilla. The opinion of Comitolus passed almost unheeded, and there was peace and comparative harmony in the schools of morals. This peace began to be broken when the friends of Jansen were planning the publication of his famous book *Augustinus*. The first of the five propositions which

were extracted from that book and condemned by Innocent X in 1653 asserted that there were some laws of God which could not be observed even by the just, do what they would, and that God did not give grace to enable them to observe these laws. This heretical and blasphemous proposition, which made God a tyrant who gave orders which he knew could not be obeyed, was altogether out of harmony with the prevailing system of moral theology, and its Jansenist supporters began to attack probabilism in order to make an opening for their own rigoristic doctrine. According to Caramuel, who was at Louvain at the time and who wrote a book against them in 1639, they began to teach covertly that the use of probabilism was something new; that he who leaves the safe way and follows probabilism cannot but be condemned by God; that opinions which are styled probable among us are not probable with God. The war between probabilism and antiprobabilism had broken out, a war conducted with the greatest heat and passion for two hundred years, and not even yet quite ended. The Louvain Doctors, after the condemnation of *Augustinus* by the Holy See, retaliated by issuing their propositions against probabilism in 1655. The strategy was the same as led Döllinger and Reusch to publish their work on *Moralstreitigkeiten*, after the definition of Papal Infallibility. The war, however, was soon carried into France, where Jansenism had won the support of a few proud spirits of the highest intellectual gifts. Among these Pascal was pre-eminent, and he struck the hardest blow which probabilism has ever sustained by publishing his *Lettres Provinciales* in 1656. The book is unfair and misrepresents the doctrines which it attacks, but its wit and style gave it at once a place in the classical literature of the world. It was condemned by Alexander VII at Rome in 1657, but by non-Catholics it is still regarded as the last word on the subject of Catholic, and especially Jesuit, moral theology.

Although the rise of Jansenism was the occasion of the outbreak of war, there were other causes also which contributed to the heat of the combat. Fr. Terill laments the disastrous laxity of opinion on moral questions which was conspicuous in many of the probabilist authors of the day. Many of these wrote books, not to expound the truth, but to attract attention to themselves and acquire notoriety. The means they employed for this purpose was the ventilation of new opinions in morals. By making use of the weak argument from similar cases they broached hitherto unheard-of doctrines which were

industriously collected by the casuists. The fact that somebody or other had said in his book that an opinion was probable and that it had not been condemned by the Holy See was held sufficient to merit for it a place among probable opinions in moral theology. Fr. Terill, himself a strenuous defender of probabilism, raised his voice against the inrush of laxity. He did much by his writings to improve the theory by stating and explaining it more accurately than had been done hitherto. He insisted that in order to be accepted as a rule of conduct it was not sufficient that an opinion should have some slight degree of probability, or should only be probably probable; it should be well grounded, seriously and solidly probable in the judgement of experts, of men of virtue and learning. The common method of proving probabilism by saying that one who acts on a probable opinion acts prudently was objectionable on the theoretical side, and Terill improved it by making use of reflex principles, such as, "A doubtful law is not promulgated and cannot bind." This eminent English Jesuit thus tried to stem the tide of laxity in an age of immorality by stating the theory of probabilism more accurately and limiting its use to its proper sphere. Other theologians with the same laudable end in view threw probabilism overboard altogether. This was especially the case with the theologians of the great Order of St Dominic. A member of this Order had first formulated probabilism, as we have seen, and, as Salon testifies, other Dominicans were conspicuous as being the first to accept and teach it. The most famous Dominican theologians of the time, Ledesma, Bañez, Alvarez, Ildephonsus, and others were all probabilists. No anti-probabilist Dominican was heard of till the year 1656. In that year a general Chapter of the Order was held at Rome, and all the members were urged to adopt the stricter opinion in morals. From that time onward the chief Dominican theologians have almost without exception been probabiliorists. Among others are the well-known names of Mercorus, Gonet, Contenson, Natalis Alexander, Concina, Billuart, and Patuzzi, the adversary of St Alphonsus Liguori.

From the strife of parties different moral systems began to emerge. Jansenist rigorism, which required direct moral certainty against the law to justify a departure from its observance, and which was not satisfied even with a most probable opinion in favour of the lawfulness of an action, was condemned by Alexander VIII in 1690. Laxism, which was satisfied with even a slightly probable opinion as a rule of

conduct, had been condemned by Innocent XI in 1679. Probabiliorism and probabilism together held possession of the field. At the beginning of the eighteenth century a few theologians such as Amort, Rassler, and Mayr, defended equiprobabilism. This system required an opinion in favour of liberty to be equally probable with that in favour of the law before allowing it to be used as a rule of morals. It would not allow anyone to follow an opinion in favour of liberty which was distinctly less probable than that which favoured the law.

These three systems still have their defenders, and the last has acquired strength from the adhesion to it of St Alphonsus in the later portion of his life. St Alphonsus Liguori is recognized as the Doctor of moral theology as St Thomas is of dogmatic. By his writings he drove out of the Church the last remnants of rigorism, and firmly established that common doctrine in moral theology which it has been the aim of the author to expound in these volumes. In spite, however, of general agreement, there are some points of detail which are still matter of controversy among moral theologians.

St Alphonsus was ordained priest in 1726 when he was thirty years of age. He had been taught the probabiliorist system of morals, but in the course of fifteen years of study and experience in the confessional he came to the conclusion that the system was false and harmful to souls. He then adopted probabilism, and mainly using recognized probabilist authorities, especially of the Society of Jesus, whom he acknowledged to be his masters in this branch of learning, he composed his chief work, the *Theologia Moralis*. The first edition appeared in 1748, and a second and much enlarged edition was issued in 1753. In 1755 St Alphonsus published an elaborate dissertation on probabilism in which he proved the doctrine and refuted the objections commonly brought against it. He became Bishop of St Agatha of the Goths in 1762, and published another dissertation in which he appeared to adopt a new system of moral theology. While admitting that it is lawful to follow a solidly probable opinion, he denied that when in favour of the law there is an opinion which is certainly and notably more probable than its opposite, this latter can be really and solidly probable. The question is one of fact. If this proposition be considered from the practical and concrete point of view, its practical truth may be admitted, and St Alphonsus probably understood it in this sense. Furthermore, it may be admitted that the doctrine has its value in deciding

when an opinion is solidly probable or not, and this was what St Alphonsus intended. He wished to exclude laxism from his system, and he invented this formula for the purpose. Moderate probabilists secure the same end by stressing *solidly* when they require a *solidly* probable opinion for a lawful rule of action. Considered theoretically and logically, the formula of St Alphonsus is open to attack, as it is not true that a greater probability, even if notable and certain, does necessarily deprive the opposite opinion of all solid probability. On this point there is still some difference of opinion between simple probabilists and equiprobabilists, but the dispute has little to do with practical morals. The dissertation of St Alphonsus was not inserted in the *Moral Theology* of the saint till it reached its sixth edition, and his change of formula made little change in the doctrine of his work. It remained substantially what it always had been—a great work on moral theology written by a moderate probabilist.

Moral theology is still what St Alphonsus left it. There is general agreement in the schools, a common doctrine which all accept; it only remains to apply this to the social and political conditions which we see growing up around us.

In this modern period of moral theology the sufficiency of attrition without any strictly so-called initial charity on the part of the penitent as a proximate disposition for the remission of sin in the sacrament of Penance may be considered as established. The changed conditions in our modern capitalist society have had their effect on moral questions, for morality must always take account of altered circumstances. Perhaps the chief result in this direction is that a practical solution has been attained of the long controversy about the lawfulness of taking interest for a loan of money. The lawfulness of the practice is now admitted; the only moral question is concerning the amount which may be exacted. The doctrine of the just price is applicable here; money, like other commodities, has in our modern capitalist society its just price.

The new Code of Canon Law came into force on Whit Sunday, May 19, 1918, and made many and important changes in the discipline of the Church, and thus indirectly in many ways affected moral theology.

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BOOK I

THE SACRAMENTS IN GENERAL

CHAPTER I

THE NATURE OF A SACRAMENT

1. MERELY external religion, without devotion of mind and heart to the service of God, is hypocrisy, but though we should serve God in spirit and in truth external rites and ceremonies are not excluded from religion. On the contrary, they form an essential part of it. Man is composed of body and soul; both come from God, and both should share in the worship due to their Creator. Besides, internal religion will be faint and likely to evaporate altogether, unless it sometimes finds expression in outward acts. God has provided for these wants of human nature by instituting the sacred rites which we call sacraments, as essential parts of true religion. They serve also as signs by which the faithful are known to and united among themselves and distinguished from those outside the fold. They serve, too, as an external profession of faith, and as a means of practising the very salutary virtue of humility, inasmuch as we are compelled to seek in external rites the spiritual help of which we stand in need, whereby intellectual pride is humbled.

There were sacraments under the Old Law as there are under the New, although the latter are far more efficacious

than the former. As expressing what is common to the sacraments of Judaism and Christianity, a sacrament may be defined to be an outward sign of inward grace. A sacrament, then, is some outward rite or ceremony instituted by God, to show forth and make known the grace which He thereby bestows on the soul of the recipient. Thus circumcision signified separation from the idolatrous world, incorporation among the people of God, and the infusion of grace into the soul for the remission of original sin. The sacraments of the Old Law produced their effect by exciting the faith of the ministers and recipients of them and by the profession of faith in the coming Redeemer which their use contained.

The sacraments of the New Law were instituted by Christ our Lord, and they confer the grace which they signify, not on account of the meritorious dispositions with which they are ministered or received, but on account of their dignity and intrinsic excellence. They were instituted by Christ, they are administered in His name and by His authority, and thus they are in a true sense the actions of Christ our Lord executed by His ministers. Divines express this by saying that the sacraments of the Christian Church confer grace *ex opere operato*, while those of the Old Law produced it *ex opere operantis*. A sacrament, then, of the New Law may be defined to be an outward sign of invisible grace instituted by Christ to confer the grace which it signifies.

There are certain rites and ceremonies in use in the Church which are called sacramentals. Of these we may mention the consecration of abbots, the first tonsure of clerics, the sacring of kings, the blessing of chalices and bells, holy water, agnus Dei, scapulars, and many more.

They are called sacramentals because they are sacred rites which, if properly used according to the mind of the Church, confer spiritual graces on the soul of him who uses them. They do this through the approbation and blessing of the Church, the Spouse of Christ, whose prayers and desires Christ always listens to, and through the good dispositions of those who use them. They thus differ from sacraments, as also in the grace which they produce. They confer actual graces, special helps to do good and avoid evil, given by God in answer to the prayers of the Church and the pious desires of those who use them properly.

2. The Council of Trent defined as of faith that there are seven sacraments instituted by Christ our Lord: Baptism, Confirmation, the Eucharist, Penance, Extreme Unction, Orders, and Matrimony; that these sacraments contain the grace which they signify, and that they always confer grace on all those who receive them and put no obstacle to their effect. The sacraments, then, require certain dispositions on the part of the recipient in order that they may produce their effect. They will be validly received if nothing that is essential be wanting to them, but in order to produce their effect when they are received the recipient must have the required dispositions. I may apply a match to a fagot of wood but this will not take fire if it is sodden with water. Similarly, if an adult asks for Baptism and is rightly baptized the sacrament will be validly received, but if the recipient has no faith or no sorrow for his sins the Baptism will indeed imprint a character, but it will not infuse sanctifying grace in the soul. In such a case as this the sacrament is validly but not licitly received; it is said by divines to be unformed, not formed.

3. The Council of Trent also defined it to be of faith that the three sacraments, Baptism, Confirmation, and Orders, whenever they are validly received, imprint on the soul a certain spiritual mark which is called a character. This character serves to distinguish in the eyes of God and of His saints those who have received the sacrament in question; it is indelible, and prevents the sacrament from being received a second time. It is, however, compatible with the presence of mortal sin in the soul, so that, as was said above, a valid sacrament imprints its proper character even when on account of some obstacle in the recipient it is unformed and does not convey sanctifying grace to the soul.

The question here occurs whether a valid but unformed sacrament will afterward produce grace in the soul, if and when the obstacle be removed. The common opinion of Doctors and divines is that it will do so in the case of the three sacraments which impress a character on the soul. This opinion is founded on the tradition of the Church and on what is to be expected from the goodness of God and the nature of the sacraments. A cause which is in existence, but which was hitherto prevented from producing its full effect on account of some obstacle in the way, will produce that effect when the obstacle is removed. Many divines hold the same doctrine of reviviscence concerning the sacraments of Matrimony and Extreme Unction, which may not be repeated at the will of the recipient. Whether it is also applicable to Penance is a much disputed point, while it is commonly denied that the sacrament of the Holy Eucharist can afterward produce its effect if it was unformed when received.

4. The sacramental grace which is conferred by the

sacraments is habitual or sanctifying grace as directed toward the particular end for which the sacrament from which it flows has been instituted. Together, then, with the grace which justifies the sinner, or which increases the sanctifying grace of the soul in friendship with God, a sacrament gives a title to receive from God special help or actual graces when they are required by the recipient of the sacrament. Thus, the sacrament of Penance if worthily received infuses sanctifying grace into the soul by which the sins confessed are blotted out, and, moreover, it gives the sinner a title to receive actual graces in time of temptation, so as to enable him not to yield. In the same way the Holy Eucharist increases sanctifying grace within the soul, making it more holy and more pleasing in the sight of God, and fresh help is given to enable it to remain steadfast in the friendship of God.

The sacraments of Baptism and Penance, which remit sin and give sanctifying grace to souls that were deprived of it, are called sacraments which give the first grace, or sacraments of the dead, inasmuch as they give spiritual life to those who were spiritually dead; while the sacraments which should only be received by such as are already in the state of grace are said to confer the second grace, and are called sacraments of the living. If the soul is already justified and in the state of grace, sacraments of the dead confer second grace; while Extreme Unction may, as we shall see, confer the first grace although it is primarily a sacrament of the living; and it is a probable opinion that the other sacraments may *per accidens* confer the first grace when received in good faith by the sinner. Inasmuch as a sacrament confers grace in virtue of the worth and dignity of the sacred rite itself, the quantity of

grace given will *per se* be the same for all who receive it. However, *per accidens*, since a cause acts with greater or less efficacy in proportion to the dispositions of the subject on which it works, so a sacrament will give more grace to such as receive it in better dispositions. It may, then, very well be that more grace will be obtained from holy communion received two or three times a week with better dispositions than from daily communion made without fervor.

5. The Council of Trent anathematizes any one who shall say that the sacraments of the New Law are not necessary for salvation, though it also teaches that not all the sacraments are necessary for every individual. Under each sacrament it will be explained how far it is necessary and in what sense.

CHAPTER II

THE MATTER AND FORM OF THE SACRAMENTS

1. The decree of Eugenius IV, for the instruction of the Armenians, lays down that all the sacraments consist essentially of three things: the matter, the form, and the minister who makes the sacrament with the intention of doing what the Church does. And, it adds, if any one of these elements be wanting the sacrament is not made. The sacraments, then, are not simple but composite signs which consist of two distinct elements. One of these in technical language is called the matter, because it is that portion of the sacramental sign which is the most indeterminate with respect to conveying the meaning which the sacrament signifies. This matter is called remote when considered by itself; it is called proximate when it is taken and applied by the minister to the making of the sacrament. The second element consists of words, and this part is called the form of the sacrament, because the words determine the matter to the more complete signification expressed by the whole sacramental sign. Thus in Baptism the water considered by itself is the remote matter of the sacrament and does not necessarily signify washing; water may be used to slake the thirst, and for many other purposes. The application of the water to the person to be baptized is the proximate matter, and when this is done

with the form of words, "I baptize thee in the name of the Father, and of the Son, and of the Holy Ghost," the whole composite rite assumes a religious aspect, and signifies according to the intention of the minister the washing away of sin from the soul.

2. The minister of a sacrament must necessarily use the matter and form which were instituted by Christ, for He alone as God-Man has the power to cause grace to be conveyed to the soul by means of sacred rites.

There must be no change made in the matter and form of the sacraments; not even the Church's authority suffices for that. If a substantial change be made either in the matter or in the form, the sacrament is destroyed. The matter will be substantially changed if in the estimation of ordinary men it is no longer the same, but something else. Thus if the wine has become vinegar, it can not be used as the matter of the Eucharist. The form will be substantially changed if the sense is no longer the same, but different. Thus, "I baptize thee in the name of the Father, and of the Son, and of the Holy Ghost" is the divinely instituted form for Baptism, and if the minister baptize with the words, "I baptize thee in the name of the Trinity" it is no sacrament, because of the substantial change. It is not lawful to make any change in the matter and form of the sacraments, but if an accidental and not a substantial change be made, so that the matter and the sense of the form remain the same, the sacrament will not be rendered invalid, as a general rule. However, a change which in itself is slight and accidental may be made substantial by the perverse intention of the minister. For the sense may then be quite different, and that different sense is expressed in the form. Thus Pope Zacharias wrote to St.

Boniface that Baptism administered with the form, *Baptizo te in nomine Patria, et Filia, et Spiritus Sancta,* is valid when the mistakes are made through ignorance of Latin, and not through heresy or a perverse intention.[1] If, then, such changes were introduced to give expression to heresy, the sense would be substantially changed and the form would be invalidated. Similarly, if Baptism were given with the form, "I baptize thee in the name of the Father, and of the Son, and of the Holy Ghost, and of the Blessed Virgin Mary," the sacrament would be invalid if the minister intended to baptize in the name of the Blessed Virgin as of one of the Persons in the Godhead; if the addition was made through mistaken devotion to the Mother of God the sacrament would not be invalid. On the principles just stated Leo XIII decided that Anglican ordinations are invalid.

3. Except in case of necessity it is not lawful in the administration of the sacraments to use only probable matter or a probably valid form. An opinion contrary to this doctrine was condemned by Innocent XI, March 2, 1679. Justice and charity, which demand that the minister confer a sacrament validly, and do nothing to imperil its validity, require that he should use only certain matter and the certainly valid form as far as possible. Reverence also for the sacrament and for Christ, who instituted it, makes it necessary to take all due care that when a sacrament is administered, it should be properly and validly administered. If, however, in a particular case only doubtful matter is at hand, and unless the sacrament is at once administered the subject may be altogether deprived of it, then such doubtful matter may be used, since

[1] C. 86, d. iv, de consec.

the reasons to the contrary then cease to be valid, because the sacraments were made for the benefit of man, not man for the sacraments.

4. As the matter and the form of a sacrament constitute together one composite sign of grace, there must not be such an interval between them as to destroy their unity. In the Holy Eucharist the form requires that the matter should be physically present at the time when the words of consecration are uttered. In the other sacraments it is not necessary that the matter and form should be put at the same time in order that the sacrament may be valid; it is sufficient for the validity if there be a moral union between them so that according to a moral estimate they form one whole. Thus in Baptism, although the rubrics prescribe that the words should be said while the water is poured on the head, yet if a brief interval, say the space of a *Pater* or of an *Ave*, separate the matter and the form, the sacrament will still be valid.

The matter and the form should be applied by one and the same minister. Baptism would not be valid if one poured the water while another pronounced the words. In the Eucharist, however, and in Extreme Unction there are more than one form, each with its separate matter, and the sacrament would be valid if one minister consecrated one species or anointed one sense and another finished the rite. This, however, is only lawful in case of necessity, nor is it lawful for many ministers to make one sacrament at the same time, except when newly ordained priests celebrate Mass with the bishop who has ordained them.

5. The sacraments should ordinarily be administered absolutely according to the manner in which they were

instituted by Christ. If, however, in any particular case it is doubtful whether a sacrament was validly administered and there will be danger of grave spiritual loss to the subject unless it is repeated, it may and should be repeated conditionally. The condition should be expressed when the rubrics require it, as in the case of Baptism and Extreme Unction. Otherwise the condition may be implicit, and it will be sufficient if the minister intend to do his duty according to the institution of Christ and the laws of Holy Mother Church.

The Ritual expressly warns the minister that the conditional form for administering Baptism is not to be used at random or lightly, but with prudence, when after diligent inquiry there is a probable doubt whether the sacrament was validly conferred before. The same principle is to be applied to the conditional administration of the other sacraments.

Except in the case of Matrimony, which is a contract and follows in this the rules affecting other contracts, a sacrament can not validly be administered under a condition which regards a future and uncertain event. The reason is because such a condition would of its nature suspend the effect of the sacrament, and when the condition is verified the matter and form no longer exist and can not now produce their effect. Thus Baptism conferred on a child under the condition, "If you attain the age of reason," would be null and void. On the other hand, a sacrament conferred under a past or present condition will be valid if the condition be verified; it will be invalid if the condition be not verified. We have already seen when it is lawful to administer a sacrament conditionally. There will be an obligation to do so whenever justice and

charity due to our neighbor require it in order to prevent his spiritual loss, or when reverence for the sacraments and for Christ, who instituted them, makes it necessary in order to avoid their invalid administration.

CHAPTER III

THE MINISTER OF THE SACRAMENTS

THE sacraments were instituted by Christ as so many channels or conduits by which he might convey to the souls of men the fruits of His passion and death. They are administered in His name and by His authority, and so Christ Himself is the principal minister of the sacraments. However, He deigns to make use of men as His instruments for administering them, and it is of these secondary ministers who make the sacraments in the name of Christ that we have here to treat. In Matrimony, as we shall see, the parties to the contract themselves are the ministers to each other of the sacrament, and any one who has the use of reason may confer Baptism validly. The minister of the other sacraments, at least for their lawful administration, must have the twofold spiritual power of order and jurisdiction which was given by Christ to His Church. We shall see when treating of the several sacraments how far order and jurisdiction are also required for their valid ministration. In the following sections we will lay down the conditions and dispositions which a minister of the sacraments should have to perform his office worthily.

SECTION I

The Attention and Intention of the Minister

1. While administering a sacrament the minister should attend to what he is doing and remember that he is engaged

in a religious function. If he voluntarily allows his mind to wander on other and profane matters, he is guilty of irreverence toward God for whose worship the sacraments were instituted and should be administered. This irreverence, however, is not grave in itself, probably not even if a priest is voluntarily distracted during the consecration in Mass, so that voluntary distractions while administering the sacraments are only venial sins. Attention, then, or advertence of the mind to what is being done, is not necessary for the validity of a sacrament; only three things are necessary for its validity, as we saw above, the matter, the form, and the intention of the minister to do what the Church does.

2. Intention is an act of the will directing an action to a certain end. Divines distinguish between an actual, a virtual, an habitual, and an interpretative intention. When a minister wishes here and now to administer a sacrament, he has an actual intention to perform the rite. If he had such a wish and in consequence set about his task, but became distracted while administering the sacrament, he has a virtual intention. An habitual intention is a wish to do something, which wish has not been retracted but which does not issue in action. An interpretative intention is a wish which would be conceived if one thought of it, but for want of thinking of it it is not elicited.

An intention of some sort in the minister is necessary for the validity of a sacrament; the Council of Trent anathematized any one who should say that there is not required in ministers while they make and confer the sacraments at least an intention to do what the Church does.[1] Now the Church by her ministers and through the sacraments

[1] Sess. vii, c. 11.

baptizes, confirms, absolves from sin, and so forth; so that the minister while making a sacrament must intend to baptize, confirm, absolve. However, it is not necessary to have an actual intention of doing this; distractions can not always be avoided, and always to have an actual intention while engaged in conferring the sacraments would be an impossible requirement. Nor would an habitual intention suffice, for it does not exist while the action is put, nor has it any effect upon the action. Much less would an interpretative intention be sufficient. It remains, then, that a virtual intention is necessary and sufficient in the minister while he makes a sacrament.

3. Ambrosius Catharinus, Salmeron, Contenson, and other theologians thought that an intention to perform the external rite of a sacrament, even if the minister internally expressly withheld his intention to do what the Church does, would be sufficient for the validity of a sacrament. Such an intention to perform the merely external rite while internally withholding the intention to baptize, absolve, and so forth, is called an external intention. The common opinion is that such a merely external intention is not sufficient, but that an internal intention or a positive wish to baptize, absolve, and so forth, is necessary for the validity of the sacrament. On December 7, 1690, Alexander VIII condemned the proposition that Baptism is valid when it is conferred by a minister who observes all the external rite and form of Baptism but inwardly in his heart makes this resolution, "I do not intend to do what the Church does." This decree would seem to settle the matter, for it seems to have been directed against Fr. Farvacques, O.S.A., who in a little book published ten years earlier had defended the opinion of Catharinus and

Salmeron. A few theologians even subsequently to the decree of Alexander VIII have defended the same view, on the ground that the decree was aimed at the Lutheran error which asserted the validity of the sacraments even when administered in joke. No Catholic, however, defended the Lutheran doctrine at the time, and it had already been condemned by the Council of Trent. We must, then, at least say with Benedict XIV that the condemnation of the above proposition inflicted a serious blow on the opinion of Catharinus, and no theologian of note now defends it. The Church does not merely apply the matter and form when ministering the sacraments, but by means of those external rites she intends to do what Christ instituted the sacraments to effect, that is, to baptize, to absolve, and so forth. An intention then to do this, to baptize, to absolve, or an internal intention, is necessary for the validity of a sacrament.

4. It is not sufficient for the minister while making a sacrament to have a vague intention of conferring it on somebody or other, or of taking and applying some matter in general for the making of the sacrament. The intention must be definite in its scope and object, otherwise there is no reason why this matter should be taken rather than that, or why one person should be benefited rather than another. An intention, therefore, to absolve any one in a crowd who may need it, or to consecrate five hosts out of a larger number on the altar would not be effective.

Neither ignorance nor mistake on the part of the minister about the nature or effect of a sacrament makes it invalid. Baptism conferred by one who knows nothing of its nature, or by one who denies baptismal regeneration, is valid,

provided that the three essential elements of the sacrament are not wanting.

Difficulties may arise from the fact that a minister while making a sacrament had mutually contradictory intentions. Thus an heretical priest while saying Mass may have the intention to do what Christ instituted but not to offer sacrifice, as he denies that Mass is a sacrifice. In this and in similar cases divines give the following rules for discovering whether the sacrament is effected or not. When the contradictory intentions are present in the mind at the time of making the sacrament, that will prevail which is the stronger, and that is the stronger which would be chosen by the minister if he realized the contradiction. So that, in the example given, the heretical minister will actually say Mass if the intention to do what Christ instituted be the prevailing and stronger one; he will not say Mass if his intention not to offer sacrifice is the stronger. When the contradictory intentions follow one another, the last will ordinarily prevail, unless the former revoked all subsequent intentions.

5. Except in case of necessity the minister of a sacrament may not use probable opinions with reference to what belongs to the validity of the sacrament. As we saw when treating of the matter and form, it would be against the reverence due to the sacraments, against justice, and against charity, if the minister exposed the sacraments to the danger of nullity through following a merely probable opinion. He is bound to follow the safer opinion when he can do so in what relates to the validity of the sacraments. In questions, however, which only touch the lawfulness or the integrity of the sacraments, and when the Church supplies what is wanting in order that the sacrament may be

valid, which she sometimes does, as we shall see later, there is no reason why the minister should not use probable opinions. The same doctrine applies also to the recipient of the sacraments.

Section II

The Faith and Holiness of the Minister

1. Neither faith nor the state of holiness and friendship with God is necessary in the minister for the validity of the sacraments which he confers. This is of faith and it was defined by the Council of Trent. The sacraments do not depend for their effect on the good or bad dispositions of the minister, as they derive their efficacy from the institution and the merits of Christ. They produce their effect *ex opere operato*, not *ex opere operantis*. However, one who has been consecrated and deputed to be a dispenser of the mysteries of God is bound to fulfil his office in a worthy manner. Holy things must be treated holily. The minister acts in the name of Christ; he becomes the instrument of Christ for the sanctification of the souls of others by means of the sacraments; he would be greatly wanting in reverence and decency if while engaged in so holy a task his own conscience were stained with grievous sin. An enemy of God himself, he is guilty of great presumption in undertaking such holy functions. A consecrated minister who solemnly administers a sacrament while conscious of being in a state of mortal sin certainly sins grievously. The question whether a lay person who in case of necessity baptizes another or contracts marriage in the state of sin himself sins grievously, as being an unworthy minister of the sacrament, is much disputed among divines. Many

weighty authorities excuse such a minister from grave sin because he is not under so strict an obligation to put himself in the state of grace before administering a sacrament as is one who has been set aside and consecrated to that office. All citizens are bound to defend their country when threatened, but there is a special obligation to do so incumbent on those who, like soldiers, have undertaken that duty. Similarly, all should indeed treat the sacraments with proper respect, but consecrated ministers are specially bound to do so while fulfilling their office. So that it is a probable opinion that a lay person who baptizes in sin in a case of necessity, or one who marries and so ministers the sacrament in sin to the other party, does not thereby sin grievously. For the same reasons it is also probable that even a consecrated minister who while in sin administers Baptism privately in case of necessity does not sin mortally, for he then acts as a private person, not as a consecrated minister.

2. A priest who says Mass in the state of mortal sin is thereby guilty of several grievous sins. He celebrates Mass unworthily, he receives holy communion unworthily, and he gives himself the sacrament though he knows that he is unworthy to receive it. Some add a fourth sin, which is committed precisely by handling and administering the Blessed Sacrament in a state of sin. It is probable, however, that this last act, though wanting in due reverence, does not amount to a grievous sin. All the more is it a safe opinion that deacons and subdeacons who exercise their functions in a state of sin do not sin grievously by so doing, nor do bishops and priests who in sin consecrate or bless pious objects, or preach the word of God.

Divines are not agreed whether a priest would commit one sin or as many sins as he administered sacraments unworthily who in a state of sin should hear many confessions or administer many Baptisms or other sacraments at the same time. If there were moral interruptions between the several sacraments, there would at least be as many sins as interruptions. But if there were no such moral interruption, it is a probable opinion that a priest who at one time administers a sacrament to many only commits one big mortal sin. The sin takes its unity from the fact that he exercises his office on one occasion unworthily, an office which he was consecrated to perform in a worthy manner. It is not, then, necessary for a priest who has sinned by hearing confessions in sin to say how many persons he has absolved; it will be sufficient if he states how often he has heard confessions in mortal sin.

It will be sufficient for a priest who is in sin to make an act of contrition before administering any of the other sacraments, but before saying Mass and receiving holy communion it is necessary for such a one to go to confession. The Council of Trent, commenting on the precept of St. Paul, "Let a man prove himself, and so let him eat of that bread," says that the custom of the Church has always interpreted these words as implying that no one who is conscious of mortal sin ought to approach holy communion without sacramental confession, however contrite he may feel. It is, of course, advisable that this should be done before a minister who is in sin administers any of the sacraments, though it is only of strict obligation before saying Mass and receiving holy communion.

Section III

The Duty of Administering the Sacraments

1. All who have the cure of souls are bound in justice and in charity to administer the sacraments to the members of their flock when these need them or ask for them reasonably. The obligation is principally one of justice, and it arises from the implicit contract which those who have the cure of souls enter into on assumption of office. The obligation is a grave one if the subject is in extreme or grave necessity, and even when there is no grave necessity one who has the cure of souls would commit serious sin if he frequently refused the sacraments to those who ask for them reasonably. An occasional refusal in such cases would not be a grievous sin, as although the spiritual good of which they are unjustly deprived is considerable, yet the loss can without much inconvenience be made good at another time.

The obligation of justice is so strict that those who have the cure of souls are bound even at the risk of life to administer the sacraments to their flock in extreme or in grave necessity. This obligation, however, only extends to those sacraments which are necessary for salvation, such as Baptism and Penance; it does not extend to those which are not necessary, not even to the Holy Eucharist, according to a very probable opinion. Mortal sin will be committed not only by frequent refusal of the sacraments to those who ask for them in a reasonable manner, but also by making one's self difficult to approach and by an ungracious manner of yielding to reasonable requests, inas-

much as such methods deter the faithful from exercising their just rights.

2. Ministers of the sacraments who have not the cure of souls are bound in charity to administer the sacraments to such as are in extreme or grave spiritual necessity. This obligation is less strict than that which lies on those who have the cure of souls, so that those who have no such cure will only be bound at the risk of life to administer the sacraments which are necessary for salvation to those who are in extreme necessity. But in order that this grave obligation of charity may exist there must be moral certainty that the person in question is in extreme spiritual necessity, or in other words, that he is in proximate danger of damnation unless the sacraments be administered. There must also be a reasonable certainty that the attempt to administer the sacraments will be successful; it would be hard if a minister of the sacraments were bound to imperil his life for a mere probability of being able to help another in spiritual distress. Furthermore, before so grave an obligation can be imposed on any one it must be morally certain that he who is in spiritual necessity is unable to help himself by making an act of contrition for his sins or of perfect love of God, and that there is no one else who is able and willing to succor him in his necessity. As all these conditions are seldom verified in any concrete case, it is apparent that those who have not the cure of souls will seldom be under a grave obligation of administering the sacraments to those who are in extreme necessity at the risk of life.

Section IV

The Duty of Refusing the Sacraments to the Unworthy

1. "Let a man so account of us," says St. Paul, "as of the ministers of Christ, and the dispensers of the mysteries of God. Here now it is required among the dispensers, that a man be found faithful." [1] As, then, the administration of the sacraments is entrusted to the ministers of the Church, they must be faithful to their charge and administer them according to the intention of Christ and the rules of the Church. These rules are chiefly contained in the Ritual and in other liturgical books. The prescribed rites are of grave obligation in serious matters, for the Council of Trent anathematized those who should assert, "That the received and approved rites of the Catholic Church, wont to be used in the solemn administration of the sacraments, may be contemned, or without sin be omitted at pleasure by the ministers, or be changed by every pastor of the churches into other new ones." [2]

Ministers are specially required to refuse the sacraments to such as are unworthy: "Give not that which is holy to dogs," said our blessed Lord.[3] The minister should have positive reasons for judging that those who ask for the sacraments of Penance and Orders are worthy to receive them. For the dispositions of the subject enter into the substance and validity of Penance, and the duty of seeing that everything is present which is required for the validity of the sacraments belongs to the minister of them. Public officials of the Church are constituted by Orders, and

[1] 1 Cor. iv. 1, 2. [2] Sess. vii, c. 13. [3] Matt. vii. 6.

the public good requires that only those who are worthy should be chosen. All lawful subjects who ask for the other sacraments are presumed to be worthy unless it is certain that they are unworthy.

With special reference to the Holy Eucharist the Ritual lays down that, "All the faithful are to be admitted to holy communion except those who are forbidden for just cause. Those who are notoriously unworthy are to be refused, such as the excommunicated, interdicted, and openly infamous, as are strumpets, those living in concubinage, usurers, wizards, sorcerers, blasphemers, and other public sinners of that kind, unless it is certain that they have repented and amended, and have made satisfaction for the public scandal which they have given." However, in the judgment of theologians, it will be sufficient if such public sinners openly go to confession; in this way according to modern discipline they will show their amendment and make satisfaction for the scandal which they have caused, unless more is required in special cases by the bishop or by other competent authority.

The Ritual proceeds: "Let the minister also repel secret sinners when they ask in secret unless he knows that they have amended; but not when they ask publicly, and can not be passed by without scandal." In the latter case public injury would be done to the secret sinner, scandal would be given to others, and other inconveniences would follow, if the sacraments were refused; and these reasons justify the minister in co-operating materially with the sin of unworthily receiving the sacraments. Of course, if the minister only knows of the bad dispositions of the subject from sacramental confession, he can make no use of his knowledge out of confession.

2. It is specially laid down in the synods[1] that the priest should strive to induce all who are going to marry to approach beforehand the sacraments of Penance and the Holy Eucharist. If he does not succeed in this, he may nevertheless assist at the marriage even though he knows that one or both parties are not properly disposed to receive the sacrament, for he is not the minister of Matrimony, but only the witness authorized by the Church to assist at it and to bless the parties; to refuse to assist would commonly do more harm than good. Even if one of the contracting parties knows that the other is not in a fit state to receive a sacrament of the living like Matrimony, still he will as a rule be excused from sin in ministering the sacrament to him, because he is not a consecrated minister of the sacrament, and the advantages connected with marriage are a sufficient justification for co-operating materially with the sin committed by the other party by receiving the sacrament in a state of sin.

3. If one who is unworthy were to demand the administration of a sacrament out of contempt for the Faith or to show his hatred for religion, the minister would be bound to refuse it even at the risk of his life. He must protect the sacraments which have been committed to his care from so great an indignity — which indeed would redound on God Himself — even at the risk of life. Whether a minister at the risk of his life would be bound to refuse a sacrament to one who was unworthy and who demanded its administration with threats of death in case of refusal, not indeed out of contempt or hatred of the Faith, but for some other reason, is a disputed point among theologians. It is at any rate a probable opinion that

[1] I West. d. 22.

the minister would not be bound to expose his life to danger, but that he might administer the sacrament to save himself, as we saw above that he might administer it to a secret sinner to avoid scandal.

4. Innocent XI condemned the proposition that instant and grave fear is a just cause for simulating the administration of the sacraments.[1] From this it follows that not only formal simulation with the intention of deceiving others is wrong, as being a lie in action, but even material simulation of administering a sacrament, whereby the matter or the form of a sacrament is used without the making of the sacrament, is not justified by grave fear. The minister may not give an unconsecrated host to a sinner as communion, or fictitiously absolve a penitent even to avoid death. The reason is because by so doing he would abuse a holy rite, instituted by Christ, and thus be guilty of gross irreverence toward God. It is a less sin for a priest to celebrate unworthily than to pretend to say Mass and not consecrate. However, a priest who instead of absolving a penitent who is not worthy of absolution dismisses him with a blessing so as not to betray him to people who are looking on, does not simulate the administration of the sacrament in the technical sense, and he does nothing reprehensible. He does not make an irreverent use of the sacramental sign or of part of it without completing the sacrament, in which the essence of the simulation of the administration of a sacrament consists in so far as it is wrong and has been condemned by the Church.

[1] Prop. 29.

CHAPTER IV

THE RECIPIENT OF THE SACRAMENTS

1. THE sacraments were instituted to sanctify the souls of men and thus to prepare them for heaven. Only living men then can validly receive the sacraments; dead men or other beings can not receive them validly. Death takes place when the soul is separated from the body, but we do not know the precise moment when that separation takes place. Except putrefaction, there are no absolutely certain signs of death, and it is quite probable that the soul remains united to the body for some time after all apparent signs of life have disappeared. Under these circumstances recent medical men and divines hold that it is lawful to administer the last sacraments to one who has to all appearances been dead for an hour or two. This is especially the case when death is the result of some sudden accident. Men only, not women, are capable of receiving the sacrament of Orders, and only those who have committed actual sins after Baptism can validly receive the sacrament of Penance. As the sacraments were instituted for the Church of Christ, of which men become members by Baptism, this sacrament is a necessary condition for the valid reception of the others.

2. No special disposition or intention is required on the part of infants who have not come to the use of reason and of imbeciles for the validity of the sacraments which

they are capable of receiving. As they have not the use of reason they are incapable of disposing themselves for the reception of the sacraments, and yet the Church has been accustomed to give them the sacraments. The practice of the Church in such matters has the very greatest authority, as the Angelic Doctor says: "The custom of the Church has the greatest authority, and it should always be followed in all things, because even the teaching of Catholic Doctors receives its authority from the Church. So that we must rather stand by the authority of the Church than by the authority of Augustine or Jerome or of any Doctor soever." [1] With reference to infant Baptism, the Council of Trent passed the following decree: "If any one saith that little children, for that they have not actual faith, are not, after having received Baptism, to be reckoned amongst the faithful; and that for this cause they are to be rebaptized when they have attained to years of discretion; or that it is better that the Baptism of such be omitted than that while not believing by their own act they should be baptized in the faith alone of the Church; let him be anathema." [2]

3. On the other hand, God does not sanctify adults who have the use of reason without some co-operation on their side; justification, says the Council of Trent,[3] is the sanctification and renewal of the interior man by the *voluntary* reception of grace and the gifts of the Holy Spirit. Some wish, desire, or intention to receive a sacrament is, then, necessary on the part of adults for its validity. A positive refusal to receive a sacrament, or a neutral state of mind neither willing nor refusing it, would make

[1] Summa, 2–2, q. 10, a. 12. [2] Sess. vii, c. 13, de Bapt.
[3] Sess. vi, c. 7.

the reception of a sacrament null and void. The kind of intention which is necessary and sufficient for the validity of a sacrament varies according to its nature. In Penance and Matrimony a virtual intention is required in the subject, as it is required in the minister. For in Penance the acts of the penitent enter into the substance of the sacrament, and so they must be directed by him to its confection. Matrimony is constituted by the mutual consent of the parties, and for this at least a virtual intention is necessary. In Baptism and Orders, which imply the undertaking of serious obligations by those who receive them, an habitual intention is required in order to be baptized validly; in other words, the person baptized must have at some time intended to receive the sacrament and not revoked his intention afterward. It is a disputed point among divines whether an habitual and express intention is necessary or whether an implicit intention contained in a desire to do all that God has ordained, or in an act of perfect charity or contrition, is sufficient. The latter opinion is probable, and it may be used in case of necessity when one is in danger of death, and then only. For the other sacraments, which confer benefits without imposing any great burden, a general or implicit intention, such as is contained in a desire to die like a Catholic with all the rites of the Church, is sufficient for their validity.

Those, therefore, who are asleep, or are unconscious, can receive the sacraments validly, for they may have all the dispositions which are necessary. The only difficulty is about Penance, but, as we shall see, it is at least a probable opinion that absolution is valid when given to one who is unconscious, but otherwise disposed for

the sacrament. However, it is not lawful to administer the sacraments to those who are asleep, unconscious, or out of their mind, except when in danger of death. For the subject should be in a fit state to dispose himself for the reception of the sacraments so that he may receive them with due reverence and fruit.

4. Except in Penance, neither faith nor good dispositions are required for the validity of the sacraments, as is clear from the practice of the Church, which is not accustomed to repeat sacraments received in heresy or in bad dispositions. However, the state of grace is necessary for the lawful reception of the sacraments of the living, as we have seen; and for those of the dead, faith, hope, and sorrow for sin are necessary, as the Council of Trent teaches that they are for the justification of the sinner.[1] Furthermore, for the lawful reception of the sacraments the subject must be free from all censures which deprive him of the right to receive them.

It follows from this that heretics and schismatics even when baptized may not lawfully receive the sacraments at the hands of Catholic ministers, as a general rule. The sacraments are intended for those who are visibly members of the Catholic Church, and they alone have the right to receive them. If any one else wishes to receive them, let him enter the visible Church of God. However, it is a disputed point whether the sacraments may be lawfully administered to a schismatic or heretic who is in good faith, and who is in danger of death. Although St. Alphonsus and others deny that it is lawful to absolve such a person, yet the opposite opinion has its supporters, and it is in keeping with several decrees of the Roman

[1] Sess. vi, c. 6.

Congregations, as for example that of the Holy Office, July 20, 1898.[1]

The faithful are not prohibited from asking for the sacraments from ministers who they know lead bad lives, if they have good reason for so doing. Sin, indeed, is committed by the minister if he administers a sacrament while in sin, but if he does so his malice must be imputed to himself, not to those who for good reason exercise their right to receive the sacraments. Moreover, the malice of the minister can not affect the sacraments.

Although in extreme necessity a Catholic may receive the sacraments from schismatical ministers, yet scandal to be avoided rarely permits of its being done, as Benedict XIV teaches.[2]

In the East the faithful may confess to any Catholic priest of any rite who has faculties for confession; and if there be only one Church in the place they may receive holy communion according to the rite in use therein Otherwise, all should receive the sacraments according to the rite to which they belong.

[1] Analecta Ecclesiastica, 1898, p. 387.
[2] De syn. vi, c. 5, n. 2.

BOOK II

BAPTISM

CHAPTER I

THE NATURE OF BAPTISM

1. The first of the sacraments, the door by which men enter into the Church of God, by which they are made her children and the sons of God, is Baptism. The Catechism of the Council of Trent defines Baptism as the sacrament of regeneration by water in the word. This is but expressing in other words what Our Lord said to Nicodemus, "Unless a man be born again of water and the Holy Ghost he can not enter into the kingdom of God." [1] The new birth which takes place in Baptism is the new life of grace which is given to the soul by the sacrament, and by this vivifying grace the soul which was dead to God lives to Him with a supernatural life.

Baptism then is a total washing of the soul from the stains of sin, both original and actual, if any have been committed, and a complete canceling of all the debt of punishment which may be due to sin. This is brought about by the infusion of sanctifying grace into the soul, together with the habits of the theological virtues of faith, hope, and charity. Moreover, by Baptism a character is imprinted on the soul by which it is known to God and

[1] John iii. 5.

His angels as that of a baptized Christian; and the person baptized becomes a member of the Church, a child of God, and heir to the kingdom of heaven.

2. By the positive will of Jesus Christ Baptism is necessary for salvation, as may be gathered from the words quoted above. This truth was defined by the Council of Trent,[1] "If any one saith that Baptism is optional, that is, not necessary unto salvation: let him be anathema." Without Baptism, then, it is impossible to be saved, not merely because Christ commanded all to receive this sacrament, but because it infuses sanctifying grace into the soul, that nuptial garment without which no one can be admitted to the beatific vision. If, however, for one cause or another it is not possible to receive the Baptism of water, its place may be supplied by an act of perfect contrition or of the pure love of God, and by martyrdom. On this account Baptism is said by theologians to be threefold: the Baptism of water, the Baptism of desire, and the Baptism of blood.

Perfect conversion to God by contrition for sin or by charity certainly infuses sanctifying grace into the soul and forgives sin, as Holy Scripture frequently declares, and as the Council of Trent teaches.[2] In this, therefore, its effect is similar to the primary effect of Baptism and it is rightly called the Baptism of desire. Still, after the promulgation of the New Law the Baptism of desire only produces its effect because explicitly or implicitly it contains a desire and a purpose to receive the Baptism of water, should occasion offer. Although the Baptism of desire reconciles the sinner to God, yet it does not imprint any character on the soul, nor does it necessarily remit

[1] Sess. vii, c. 5, de Bapt. [2] Sess. xiv, c. 4.

all the temporal punishment due to sin. The extent to which it does this will depend on the intensity of the act.

Martyrdom also, or death patiently endured for the sake of Christ or for some Christian virtue, has the same effect as the Baptism of desire. "Greater love than this," said our blessed Lord, "no man hath, that a man lay down his life for his friends." [1] Still martyrdom does not produce its effect simply as an act of love, but in a manner *ex opere operato,* by a special privilege, as being an imitation of the passion and death of Christ. Thus the Church honors as saints in heaven the Holy Innocents and other children who have been put to death for the sake of Christ. In the case of adults who have committed sin there must at least be attrition for sin in order that martyrdom may produce its effect as a kind of Baptism.

[1] John xv. 13.

CHAPTER II

THE MATTER AND FORM OF BAPTISM

1. THE remote and valid matter of Baptism is natural water in a suitable state for washing one's self. It is quite immaterial whether the water be spring water, rain water, sea water, or water from a river or pond; but frozen water is doubtful matter until it is melted, because it is not suitable for washing one's self; while mud is invalid matter.

For solemn Baptism the Church prescribes the use of water specially consecrated for the purpose, and the same may be used for private Baptism, as also may holy water and common water. For the private Baptism of adults who have been converted from heresy and require to be baptized conditionally, the First Synod of Westminster prescribes the use of holy water.

NOTE. — What is here prescribed by the First Synod of Westminster, *viz.*, the use of holy water in the private Baptism (conditional) of adult converts from heresy, does not apply to the United States. — END OF NOTE.

The proximate matter of the sacrament is its use or application in the act of baptizing. This may validly be done either by infusion, or immersion, or sprinkling, provided that the water touches the head of the person to be baptized and flows so as to express the action of washing. In the Western Church, however, a triple pour-

ing of water on the head of the person to be baptized, or a triple immersion, if such be the custom, is prescribed by the rubrics of the Ritual. Care should be taken that the water touch the skin, as the Baptism would be of doubtful validity if it merely touched the hair. Merely to lay the wet hand or finger on the skin would not be valid Baptism, and even if the wet finger were moved over the skin the validity would still be doubtful.

2. The form of Baptism is: "I baptize thee in the name of the Father, and of the Son, and of the Holy Ghost." Any change in this form which altered the sense would also invalidate the Baptism, as if one should say, "I baptize thee in the name of Christ," or, "of the Blessed Trinity." The form should be pronounced by the minister while he pours the water, and it is clear that if one pronounced the words while another poured the water, or if one baptized one's self, the Baptism would be invalid.

CHAPTER III

THE MINISTER OF BAPTISM

1. THE ordinary minister of solemn Baptism is a priest, but as it is a parochial sacrament, its lawful administration belongs exclusively to the parish priest or to the priest who has the cure of souls in the district in which the parents of the child have their domicil. Such priest may of course delegate authority to any other priest to baptize in his name; if there is reasonable cause, as in case of illness or constant occupation in hearing confessions, he may commission a deacon to give solemn Baptism. The children of strangers or of those who are without fixed home may be baptized in the church which they elect for the purpose.

In case of necessity, when there is danger of some one dying without Baptism, any one who has the use of reason may baptize without the ceremonies. In such cases of necessity the Ritual prescribes that a priest should be preferred to a deacon, a deacon to a subdeacon, a cleric to a lay person, a man to a woman, unless the latter be preferred for the sake of decency or because she is better acquainted with the method of valid Baptism. Those who have the cure of souls should take care that the faithful, especially midwives, are instructed in the right method of administering Baptism. The Ritual also prescribes that a father or mother should not baptize their own child

except when it is in danger of death and no one else can do so, and then the parent who baptizes does not contract spiritual relationship with the other parent of the child.

2. The ceremonies prescribed for solemn Baptism are of grave obligation, so that it would be a mortal sin to omit without necessity a notable part of them, as, for example, the anointings, or the use of consecrated water. The child is anointed with the oil of catechumens before the actual baptizing, and afterward with the chrism. The holy oils should be kept carefully separated and they should be renewed every year when the oils are consecrated by the bishop on Maundy Thursday. The baptismal font, too, should be blessed on Holy Saturday with the oils consecrated on the previous Thursday. If they have not arrived in time the font should be blessed without them and they should be added afterward, unless in the meantime some one has to be baptized, and then the old oils may be used in blessing the font. If the oils threaten to be exhausted, fresh, unblessed olive oil may be added always in smaller quantity. The same rule may be followed with regard to the consecrated water in the font. The Ritual admonishes the parish priest to take care that as far as possible names of saints should be given in Baptism, so that by their example the baptized person may be moved to live holily, and that he may hope to enjoy their patronage. In solemn Baptism the Latin language should be used, but certain portions may also be rendered in the vernacular, according to the Ritual approved for use in the country.

3. Baptism should ordinarily be administered in the church to which is attached the cure of souls and in which

there should be a baptismal font. It is not lawful to baptize outside the church except in case of necessity, and then if the child survive, the ceremonies should afterward be supplied in the church. With the bishop's leave Baptism may also be given to royal children and to the children of great nobles in their private chapels, and also in remote stations when the church is too distant for tender children to be taken thither. In places where there are not even such stations, as sometimes in the missions, Baptism may be given in private houses but with all the ceremonies.

NOTE. — The law still prevailing in the United States regarding the administration of Baptism outside the church is found in the Second Plenary Council of Baltimore (N. 237) as follows: "*Præcipimus ne umquam sacerdotes extra ecclesiam hoc sacramentum conferre audeant, præter mortis imminentem casum, in urbibus unam aut plures ecclesias habentibus. Qui ruri degunt, aut in pagis et oppidulis, ubi nulla est ecclesia, infantes ad ecclesiam propinquiorem vel stationem, in qua Sacrum fieri solet, baptizandos adducant. Quod si ob aeris intemperiem, itineris difficultatem, parentum inopiam, vel alias graves causas hoc fieri nequeat, tunc missionarii prudentiæ et conscientiæ relinquimus, ut eos domi cum omnibus Ecclesiæ cæremoniis baptizet.*" — END OF NOTE.

Adults should be baptized according to the longer form in the Ritual unless a special indult has been granted to use the shorter form, as is sometimes done.

NOTE. — Among the petitions presented to the Holy See by the Fathers of the Second Plenary Council of

Baltimore (1866), one was that in the Baptism of adults the shorter form prescribed for infant Baptism might be employed for ten or twenty years. The answer was: "S. Cong. *censuit Episcopos recurrere debere, expleto tempore postremæ concessionis.*" In 1830 the bishops of the United States had procured for twenty years the faculty of using the formula for infant Baptism in the Baptism of adults. This faculty was renewed for five years on the occasion of the confirmation of the First Plenary Council of Baltimore in 1852. In 1859 the bishops of the ecclesiastical province of St. Louis in their Second Provincial Council asked for the faculty "*usque dum S. Sedes aliter statuerit,*" and the petition was granted "*juxta preces,*" though it would seem with some reluctance, for the bishops were told "*Interim curent de inducenda formula pro adultis a Rituali Romano præscripta.*" It may be remarked that the province of St. Louis at that time (1859) comprised Missouri, Illinois, Indian Territory, Iowa, Kansas, Minnesota, New Mexico, Nebraska, Oklahoma, Tennessee, and Wisconsin, so that the privilege exists to-day in all the dioceses included within the boundaries of those States, since the Holy See has never withdrawn it. At present quite a large number of dioceses besides those belonging to the province of St. Louis as constituted in 1859 possess the same faculty. Still it does not exist in every diocese of this country. Thus in the statutes of the archdiocese of New Orleans the following enactment is found: "*Statuimus ut pastores præscripta formula (baptizandi adultos) utantur, nisi obstet grave incommodum;*" and the archbishop of New Orleans recently stated that he possesses no indult regarding the formula for the Baptism of adults. — END OF NOTE.

Those who have attained the use of reason are their own masters in the things of God, and are considered adults with reference to Baptism.

NOTE. — The S. Cong. of Propaganda issued the following decree (March 3, 1703): "*Possunt baptizari, etiam invitis parentibus, pueri adulti qui Baptismum desiderant: adultus autem censetur qui septennium complevit, regulariter loquendo.*" It does not follow, however, that such children (seven years old) while considered adults for receiving Baptism without the consent of their parents should be baptized according to the form of Baptism for adults until they reach the age of puberty. Holy Office, May 10, 1879. Cf. Anal. Eccles., vol. 5, p. 482. — END OF NOTE.

Adults who have been converted from heresy and require conditional Baptism are to be baptized privately with holy water and without the ceremonies, according to the First Synod of Westminster.

NOTE. — There is no permission in the United States to follow the practice here mentioned for England. On the occasion of the Second Plenary Council of Baltimore, the Fathers petitioned the Holy See that, when admitting into the Church adult heretics whose Baptism was doubtful, the ceremonies of solemn Baptism might be omitted and holy water be used for conditional Baptism. The petition, however, was not granted, as appears from the Instruction of the Prefect of the Propaganda sent to the Bishops of the United States, January 24, 1868: "*Supplicarunt* n. 264, *ejusdem capitis, uti apud eos morem inducere liceat qui apud Anglos viget, baptizandi sub con-*

ditione privatim, cum aqua tantum lustrali, et absque cæremoniis, adultos ab hæresi ad Ecclesiam conversos, de quorum baptismate prudenter dubitatur. Quoad hoc postulatum, S. C. censuit respondendum, pro nunc non expedire." — END OF NOTE.

Infants, however, who require conditional Baptism should be baptized secretly but with the ceremonies according to a decree of the Holy Office, April 2, 1879.

NOTE. — The decree to which the author refers was an answer to a question proposed by the Bishop of Nottingham in England regarding infants doubtfully baptized in Protestantism: "*An liceat sub conditione baptizare publice, et cum suis cæremoniis parvulos rationis expertos, qui in protestantismo dubie et sine cæremoniis jam baptizati, sub conditione baptizari debent?*" Resp. — "*Baptismum sub conditione parvulis, de quibus in precibus, in casu administrandum esse secreto, et cum cæremoniis in Rituali Romano præscriptis.*" It does not follow from this reply that secrecy is to be observed when infants of Catholic parents have been doubtfully baptized for some cause or other, for example, those baptized *in utero*, and afterward receive conditional Baptism. Even in regard to infants doubtfully baptized in Protestantism, it seems probable that this decree was not intended to express any universal law of the Church, but rather a particular ordination obligatory in the diocese of Nottingham and perhaps throughout England, but not in a country like the United States where, speaking generally, there would be no special reason demanding secrecy in the administration of conditional Baptism to infants doubtfully baptized in some Protestant sect. It is well known that the Roman Con-

gregations, including the Holy Office, not unfrequently issue decrees binding upon those to whom they are directed, but not of universal obligation. Cf. Wernz, Jus Decretalium, vol. 2, n. 659. — END OF NOTE.

CHAPTER IV

THE SPONSORS

1. Sponsors according to ecclesiastical law are used in solemn Baptism to answer for the child baptized, to hold him during Baptism, or to receive him immediately after Baptism from the hands of the minister, and to act as his instructors in the Faith which he received and professed in Baptism. With regard to those who have Catholic parents, the sponsors may ordinarily presume that the Catholic education of the child will be sufficiently provided for by them; but otherwise the sponsors will be bound as far as possible to provide for it. Sponsors may be employed in private Baptism, but there is no obligation of doing so.

2. The Council of Trent ordained, "that in accordance with the appointments of the sacred canons, one person only, whether male or female, or at most one male and one female, shall receive in Baptism the individual baptized; between whom and the baptized, and the father and mother thereof, as also between the person baptizing and the baptized, and the father and mother of the baptized, and these only, shall spiritual relationship be contracted. The parish priest, before he proceeds to confer Baptism, shall carefully inquire of those whom it may concern, what person or persons they have chosen to receive from the sacred font the individual baptized; and he shall allow him or them only to receive the baptized; he shall

register their names in the book, and teach them what relationship they have contracted, that they may have no excuse on the score of ignorance. And if any others besides those designated should touch the baptized, they shall not in any way contract a spiritual relationship, any constitutions that tend to the contrary notwithstanding." [1]

The formal inquiry as to who have been chosen for the office of sponsors which the council here prescribes is probably not necessary for the validity of the assumption of the office; it will be sufficient for the validity if the sponsors have the use of reason and intend to assume the office, if they are themselves baptized, and if during Baptism or immediately afterward they physically touch the person baptized. One usually holds the child over the font on his or her right arm, while the other lays his right hand on the shoulder of the child.

3. The following are prohibited by the Church from being admitted as sponsors: the parents of the person baptized, if both are living, heretics, those who are excommunicated or interdicted, public criminals or people without reputation, those who are ignorant of the rudiments of the Faith, and members of Religious Orders. Others are sometimes prohibited by provincial law, as the following in England: those who have not reached the age of puberty, those who have not been confirmed or who have not made their Easter duties, and ecclesiastics.

NOTE. — In the United States there is no general prohibition against admitting as sponsors those who belong to any of the four classes here mentioned. The Second Plenary Council of Baltimore (n. 231), referring to the

[1] Sess. xxiv, c. 2, de Ref.

qualifications of sponsors, quotes the Roman Ritual: "*Patrinos saltem in ætate pubertatis, ac sacramento Confirmationis consignatos esse maxime convenit. Sciant præterea parochi (quod et de sacerdotibus omnibus qui baptismum administrant intelligendum est), ad hoc munus non esse admittendos infideles, aut hæreticos: non publice excommunicatos, aut interdictos: non publice criminosos, aut infames: nec præterea, qui sana mente non sunt: nec qui ignorant rudimenta fidei: hæc enim patrini spirituales filios suos quos de baptismi fonte susceperint, ubi opus fuerit, opportune docere tenentur.*" While it is highly becoming according to these words that sponsors should have reached the age of puberty and have received the sacrament of Confirmation, it is not strictly obligatory. Those who have neglected their Easter duties are not necessarily to be excluded from the office of sponsor; but may sometimes belong to the class of *Infames,* and, if so, can not be admitted. — END OF NOTE.

One may be sponsor by proxy, and then the principal, not the proxy, contracts spiritual relationship with the persons mentioned in the above extract from the Council of Trent. If sponsors are used in private Baptism, it is a disputed point whether they contract spiritual relationship, and both the affirmative and negative opinions are probable.

CHAPTER V

WHO MAY BE BAPTIZED?

1. ANY living human being who has not yet been baptized is capable of receiving this sacrament. If he has the use of reason, an habitual intention at least to receive Baptism is necessary for its validity, though, as we saw above, it is probably sufficient if it be implicitly contained in a wish to do all that God requires, or any similar act of the will. In children who have not attained the use of reason and in imbeciles no intention is required for the reception of Baptism; the intention of the Church supplies for it.

For the lawful reception of this sacrament by adults who have the use of reason all those dispositions are necessary which, as the Council of Trent teaches,[1] are required for the justification of the sinner. They must, then, have faith, and believe all those truths which God has revealed and which the Church proposes to our belief. In particular they must know and believe explicitly the being of God, that He rewards and punishes men according to their deserts, the Blessed Trinity, the Incarnation, the Apostles' Creed, the Decalogue, and the Lord's Prayer. In other words, they should be properly instructed in the catechism. They should also approach the sacrament with hope, and at least with that kind of sorrow for sin which is called attrition.

[1] Sess. vi, c. 6.

2. Catholic parents are bound to see that their children are baptized, and that as soon as can conveniently be done. According to approved theologians it would be a serious sin if the Baptism of a child were put off for a month without good reason. As Catholic parents are subjects of the Church, and they are bound to obey her laws, no injustice would be done if a child of such parents were baptized without or against their wish. Non-baptized parents are not subject to the Church, and, as St. Thomas teaches, it would be against natural justice if an infant of theirs who is in no danger of death were to be baptized without their consent. When a non-baptized child is in danger of death the necessity of providing for its eternal salvation overrides all other private considerations.

When a child comes to the use of reason he becomes his own master in the things of God and absolutely he may ask for and receive Baptism without the consent of his parents. Still in practice great caution is needed in such a matter. Of course, if the parents agree to allow the child to be brought up a Catholic, and it has Catholic sponsors, the difficulty will cease. But if it is baptized against their will, and remains subject to their control in other respects, the faith of the child will be in constant danger, especially as it can hardly be very firmly established before mature age. Ordinarily, then, children should not be baptized without their parents' consent until they reach an age when their convictions are firmly rooted and there is every prospect of their perseverance.

3. It would be a grave sin knowingly to baptize again one who has already been validly baptized. So that when a child has been baptized by a nurse or midwife by reason of apparent danger of death, inquiry should indeed be

made as to the manner of the Baptism, but if the matter and form were rightly applied the Baptism must not be repeated; only the ceremonies must be supplied in the Church. In case of doubt concerning the validity of the former Baptism, it should be repeated conditionally.

When heretics are converted to the Faith, inquiry should be made in every case concerning their Baptism. If it is found either that they were never baptized, or that the Baptism was invalid, they must be baptized again absolutely. If after inquiry a prudent doubt remains as to whether they were ever baptized, or as to whether their Baptism was valid, they should be baptized again conditionally, and in secret so as to avoid scandal.

NOTE. — As stated before regarding the United States, when adult heretics, whose Baptism is doubtful, are received into the Church, the ceremonies prescribed by the Roman Ritual are to be observed. Hence the formula for adults is to be employed, unless there be an indult for the use of the form for infants. In this country, there appears, speaking generally, no reason requiring secrecy in giving conditional Baptism, as there would be no danger of scandal, since it is well known that there is no attempt at re-Baptism, properly so called, but a well-grounded doubt regarding the validity of the former Baptism. — END OF NOTE.

If it is found that their Baptism was valid, they should only abjure their errors, and make a profession of the Catholic faith.

4. An aborted fetus, if it is still living, should be baptized, rupturing the membranes if necessary, and pouring

water over it while at the same time pronouncing the form of Baptism.

The Ritual admonishes ministers of the sacrament to be cautious about baptizing monsters. If a monster has not a human shape, but is a mere mass of fleshy growth, it should not be baptized at all. If there are two heads and two bodies, there are two persons, and both should be baptized, separately if there is time, otherwise under a common form. If it is doubtful whether there are two persons or only one, Baptism should be given absolutely to one, and again conditionally to the other, under the form, "If thou art not baptized, I baptize thee," and so forth.

The Ritual also prescribes that if a woman dies in pregnancy the fetus should be extracted, and if still living should be baptized. This, of course, supposes that there is a skilled person present who judges that the fetus is still alive, and who is capable of performing the necessary operation.

NOTE. — A priest, however skilled he may be in surgery, is not bound to perform the operation of extracting the fetus; the better opinion is that it is not lawful under any circumstances for him to perform it. The Holy Office, February 15, 1780, published the following decree: "*Hæc autem fetus extractio de prægnantis defunctæque alvo matris, quamvis patefacienda, ut dicimus, ac persuadenda sit, expresse tamen cavet, prohibetque Sanctitas Sua, ne missionarii in casibus particularibus se ingerant in demandanda sectione, multoque minus in ea peragenda. Sat proinde missionariis fuerit illius notitiam edidisse, curasseque ut ejus perficiendæ rationem perdiscant qui chirurgis intendunt, laici homines, tum vero, cum casus tulerit, ejusdem praxim ipsorum oneri ac muneri reliquisse.*" When some questions were proposed more recently on this subject, the Holy Office

replied, December 13, 1899, by only citing the decree given above. See Anal. Eccles. vol. 8, p. 54, 55. While the response of the Sacred Congregation on both occasions (in 1780 and 1899) was given for particular places under somewhat special circumstances, one may infer without much hesitation that a priest should never perform this operation. It may be added that the civil law usually imposes a penalty upon any one, except a licensed practitioner, attempting the operation. Scandal, too, would generally occur, and much detriment to religion would follow if a priest were to perform it. — END OF NOTE.

The question also occurs whether a mother, who is still living but who can not bring forth her child alive, is bound to undergo a serious operation like Cesarian section in order to insure the eternal welfare of her child by Baptism. Of course she may not undergo the operation if it would be the immediate cause of her own death. The mother must not be killed even for the salvation of the child. Even if her health and condition are such that in all probability she could stand the operation, yet it is probable that she is under no obligation to submit to it. The child can with sufficient certainty be baptized in the womb, and even if the operation were performed, greater certainty that the child would still be alive and capable of Baptism can seldom be obtained. In such circumstances no strict obligation to undergo a serious operation can be imposed on the mother.

BOOK III

CONFIRMATION

CHAPTER I

THE MATTER OF CONFIRMATION

1. CONFIRMATION is a sacrament by which a baptized person receives grace boldly to profess and defend the Faith which he received in Baptism. It is, then, complementary to Baptism; as Baptism makes a man a follower of Christ, Confirmation makes him a soldier of Christ. It is a sacrament of the living, and gives an increase of sanctifying grace to the soul together with the right to receive those actual graces which will be needed to resist temptation and to lead a good Christian life. It is also one of the three sacraments that imprint a character on the soul.

2. Divines are not agreed as to what constitutes the matter of Confirmation. Some hold that the general imposition of hands by the bishop who confirms at the beginning of the rite is the essential matter; while the subsequent anointing of each person to be confirmed belongs to the matter accidentally. Others maintain that this general imposition of hands and the anointing form the essential matter of the sacrament. The common opinion is that the anointing with chrism, together with the simultaneous imposition of the hand of the bishop on the forehead of the confirmed person while he makes

on it the sign of the cross with the chrism, is the adequate and essential matter of the sacrament.

Chrism, which is thus the remote matter of Confirmation, is made of olive oil and balsam. It is a disputed point whether the mixture of balsam is only of precept or whether it is necessary for the validity of the sacrament. However, balsam of any country will suffice. The chrism thus made must be blessed by a bishop, and this according to the common opinion is necessary for the validity of the sacrament.

Three kinds of holy oils are blessed by the bishop on Maundy Thursday: the oil of the sick, with which Extreme Unction is given; the oil of catechumens, with which those about to be baptized are anointed in administering Baptism; and chrism. It is probable that any one of these holy oils will serve for the others, so that Confirmation given with oil of the sick would be probably valid. Still it is not lawful to follow this opinion except in case of necessity.

A fresh supply of holy oils should be procured every year after they have been blessed by the bishop on Maundy Thursday, and the old ones burned. However, if the new oils can not be obtained at the proper time, especially in the missions where vicars-apostolic without episcopal consecration often have faculties to give Confirmation, the old oils may be used as long as the difficulty of obtaining new ones lasts.

3. The form of Confirmation is, "I sign thee with the sign of the cross, and I confirm thee with the chrism of salvation, in the name of the Father, and of the Son, and of the Holy Ghost." There is some doubt as to whether the invocation of the Blessed Trinity is an essential part

of the form, chiefly because it does not appear along with the other part in the form used in the Eastern Church. The question belongs to dogmatic theology, but briefly we may say that if it is an essential part of the form, the invocation is elsewhere in the Oriental rite.

CHAPTER II

THE MINISTER OF CONFIRMATION

THE ordinary minister of Confirmation is a bishop, but the Pope may, and in the missions frequently does, delegate faculties to a priest to administer the sacrament with chrism blessed by a bishop. In other words, a bishop is the ordinary official in the hierarchy who has the power to admit Christians into the army of Our Lord by confirming them, but the General of the army in special cases empowers a simple priest to do this. It is a disputed point whether the Pope could empower a simple priest to bless the chrism.

A bishop may not give Confirmation outside his diocese without the leave of the bishop of the place; but within his diocese he may by custom confirm all who come to him, whether they are his subjects or not. A bishop is bound to give his subjects who have not been confirmed the opportunity of receiving the sacrament, and according to divines he would sin grievously if without good reason he neglected to do so for eight or ten years.

NOTE. — The Third Plenary Council of Baltimore (n. 14) has the following enactment: "*Unusquisque igitur Episcopus saltem unoquoque triennio totam diœcesim perlustrare teneatur, non solum ut gregem suum cognoscat eaque omnia quæ ad spirituale eorum bonum necessaria sunt suis ipse oculis perspiciat, sed etiam ut fideles tot amittendæ fidei in hac*

regione periculis expositos Sacramento Confirmationis munire possit. Quod si per se ipse facere nequeat, id per alios idoneos viros præstet, adhibito etiam pro Sacramento Confirmationis alicujus inter viciniores Episcopos ministerio." — END OF NOTE.

He must also be prepared to administer Confirmation when a reasonable request is made for it by any of the faithful subject to his charge.

CHAPTER III

THE SUBJECT OF CONFIRMATION

1. ANY one is capable of being confirmed who has not yet received this sacrament and who has been baptized. For the validity of the sacrament the use of reason is not necessary, but adults who have the use of reason must have at least an habitual intention of receiving the sacrament. No one may lawfully receive this sacrament who is not in the state of grace. Moreover, according to modern discipline, Confirmation is only given to those who have been well instructed in Christian doctrine and know well what is required of a good Catholic. Before Confirmation is administered, the opportunity is usually taken to give special instructions in Catholic faith and practice to those who are about to receive the sacrament.

NOTE. — Regarding the instructions to be given to children in the United States the Third Plenary Council of Baltimore (n. 218) decreed as follows: "*Jubemus ergo ut parvulorum curam assiduam habeant animarum rectores, præsertim quo tempore parantur ad Sacram Synaxim prima vice recipiendam, et quidem ut ipsimet rectores vel eorum vicarii prædictos parvulos saltem per sex hebdomadas et ter in unaquaque (saltem in loco ubi resident vel ad quem facilius accedere possunt), Catechismum doceant. Nemo ad Con-*

firmationis susceptionem admittatur, quin diligenter instruatur de iis, quæ ad naturam effectumque hujus Sacramenti spectant." — END OF NOTE.

One sponsor of the same sex as the person to be confirmed, who has himself received this sacrament, is required in Confirmation. He should not be the same as the sponsor of the party in Baptism; he must lay his right hand on the right shoulder of the person who is being confirmed, with whom and with whose parents he contracts spiritual relationship.

NOTE.—According to the instruction of the S. C. of Propaganda given to the bishops of the United States on the occasion of the Second Plenary Council of Baltimore, the following decree (n. 253) was inserted: "*Quamquam de necessitate hujus Sacramenti non sit, ut in eo recipiendo Patrinus vel Matrina adhibeatur, cum tamen id laudabilis Ecclesiæ consuetudo suadeat, sacrique Canones præscribant, Episcopi nullum non movebunt lapidem, ut disciplina hujusmodi, jam in nonnullis harum Provinciarum Diocesibus invecta, ubique introducatur. Confirmati vero habebunt Patrinos singuli singulos, nec tamen fœminis mares nec maribus fœminæ Patrini officium præstabunt. Quod si hoc fieri omnino nequeat, saltem duo pro pueris Patrini, et duæ pro puellis Matrinæ adhibeantur.*" — END OF NOTE.

2. The First Synod of Westminster[1] prescribes that priests who have the cure of souls should do all in their power to have children confirmed, especially if they be of the humbler sort, so that they may be able to resist the temptations to which their Faith will afterward be

[1] d. 17.

exposed. Many divines hold that it would be a grave sin to neglect to receive this sacrament. The opinion, however, of St. Thomas, that it is not strictly necessary, is still probable. Although, of course, it should not be neglected, and sin would certainly be committed if this were done through contempt, yet there is no clear law, divine or ecclesiastical, which obliges all to receive confirmation under penalty of sin. Against this view the Constitution of Benedict XIV, *Etsi Pastoralis*, and the Instruction S. C. de P. F., May 4, 1774, are sometimes quoted. The former document, however, was not issued for the universal Church, but only for certain Greco-Italians of southern Italy, nor does an instruction of Propaganda constitute a law in the strict sense, especially for the universal Church.

NOTE. — A question arises, whether the opinion considered by the author as probable, *viz.*, that there is no strict precept of receiving the sacrament of Confirmation, may be held for the United States. There is a special difficulty here on account of a decree of the Second Plenary Council of Baltimore (n. 250), where the necessity of receiving this sacrament appears to be distinctly set forth. "*Licet vero hoc sacramentum non sit necessarium de necessitate medii ad salutem, nihilominus est necessarium de necessitate præcepti iis omnibus, qui jubentis Dei et Ecclesiæ præcepta intelligere et adimplere possunt.*" Some think that these words may be taken as indicating an obligation *sub veniali* only, or, if they indicate a grave obligation, one that is only *per accidens* grave. This interpretation does not seem easily admissible. When the Fathers of the council refer to Confirmation as necessary, *necessitate præcepti*, they appear to convey that it is obligatory under

penalty of mortal sin, and indeed *per se* thus obligatory. Whenever theologians use the distinction, *necessitas medii* and *necessitas præcepti*, they always mean by the latter something binding *sub gravi;* and binding *per se* in this manner, unless they employ the term, *per accidens*, or some equivalent expression. It is to be presumed that the bishops attached the same signification to the term. If we hold that in the decree there is question of a grave obligation *per se* to receive Confirmation, a further point may be raised; namely, whether the bishops in formulating the decree intended to exercise their legislative authority, so as to make it obligatory *sub gravi* for the faithful in the United States to receive this sacrament, or were expressing their opinion regarding the divine and ecclesiastical precept of receiving Confirmation without imposing any new obligation. It was competent for the bishops assembled in plenary council to legislate upon this matter, so that after the necessary approval of its acts would have been given by the Holy See the faithful in this country would be bound *sub gravi* to receive Confirmation. However, it is by no means clear that the bishops proposed to make any new legislation on this subject; more probably they were content to declare what they considered as the true opinion to be held concerning the necessity of Confirmation throughout the Church. The words of the decree, "*jubentis Dei et Ecclesiæ præcepta*," lend some weight to this view, as if the bishops were referring to a law already in existence, divine and ecclesiastical, requiring the faithful to receive Confirmation. That there was and is such a law has been held by many eminent theologians along with St. Alphonsus; and the opinion has received much support from the Constitution of Benedict

XIV, "*Etsi pastoralis,*" as also from an Instruction of S. C. de P. F., April 23, 1774, wherein the following words are given: "*Etsi enim hoc sacramentum non sit de necessitate medii ad salutem, tamen sine gravis peccati reatu respui non potest, ac negligi, cum illud suscipiendi opportuna adest occasio.*" On the other hand, there have not been wanting many writers of note, ancient and modern, holding that there is no divine law, natural or positive, which can be adduced to prove the grave obligation of receiving Confirmation. St. Thomas (3. q. 72, a. 1, ad 3) says: "*Omnia sacramenta sunt aliqualiter necessaria ad salutem; sed quædam sunt, sine quibus non est salus; quædam vero sunt quæ cooperantur ad perfectionem salutis; et hoc modo confirmatio est de necessitate salutis, quamvis sine ea possit esse salus, dum tamen non prætermittitur ex contemptu sacramenti.*"

In answer to the argument taken from the words of the S. C. de P. F., it may be said that it was not the intention of that Congregation to settle the controversy among theologians regarding the necessity of Confirmation. It is interesting to note that the same year (1866) in which the decrees of the Second Plenary Council of Baltimore were presented to the Holy See for approval, the Holy Office published an Instruction containing a positive statement in favor of the opinion of St. Thomas that there is no grave obligation *per se* of receiving Confirmation. "*Ut docet Sanctus Thomas* (3. q. 72, a. 8, ad 4), *omnino periculosum esset si ab hac vita sine confirmatione migrare contingeret, non quia damnaretur, nisi forte propter contemptum, sed quia detrimentum perfectionis pateretur.*" (S. O. June 20, 1866.) From these words it may be inferred that there is no divine law or any general ecclesias-

tical law *per se* obliging the faithful under pain of mortal sin to receive this sacrament. It may also be held with probability that in the United States there is no special ecclesiastical legislation requiring its reception. — END OF NOTE.

BOOK IV

THE HOLY EUCHARIST

PART I

THE SACRAMENT OF THE EUCHARIST

CHAPTER I

THE NATURE AND EFFECTS OF THE EUCHARIST

1. THE Council of Trent teaches "that in the august sacrament of the Holy Eucharist after the consecration of the bread and wine Our Lord Jesus Christ, true God and man, is truly, really, and substantially contained under the species of those sensible things. For neither are these things mutually repugnant, — that Our Saviour Himself always sitteth at the right hand of the Father in heaven, according to the natural mode of existing, and that nevertheless He be in many other places sacramentally present to us, in His own substance, by a manner of existing which, though we can scarcely express it in words, yet can we by the understanding, illuminated by faith, conceive, and we ought most firmly to believe, to be possible unto God; for thus all our forefathers, as many as were in the true Church of Christ, who have treated of this most holy sacrament, have most openly professed, that Our Redeemer instituted this so admirable a sacrament at the Last Supper, when after the blessing of the bread and wine, He testified

in express and clear words that He gave them His own very body and His own blood. And this faith has ever been in the Church of God, that immediately after the consecration the veritable body of Our Lord and His veritable blood together with His soul and divinity are under the species of bread and wine."[1] It does not belong to the province of moral theology to prove or to defend this dogma of our Faith. We accept the teaching of the Church that the Holy Eucharist is a sacrament in which under the species of bread and wine we receive Jesus Christ, the spiritual food of our souls. It is not merely a sacrament while it is received by the communicant, or while it is consecrated by the priest in Mass. It is a permanent sacrament, under which Our Lord remains present as long as the sacred species remain unchanged. It gives sacramental grace to the soul while it is being swallowed as food, and the divine presence remains in the communicant until the species of bread and wine are corrupted.

Although in the consecration there is a twofold matter and form, yet these constitute only one sacrament, for the species of bread and wine together signify a complete spiritual repast, just as food and drink go to make one meal for the body.

2. The effects which the Holy Eucharist produces in the soul are set forth by the Council of Trent: "Our Saviour wished that this sacrament should be received as the spiritual food of souls, whereby may be fed and strengthened those who live with His life who said, 'He that eateth Me, the same also shall live by me'; and as an antidote, whereby we may be freed from daily faults, and be preserved from mortal sins. He would, furthermore,

[1] Sess. xiii, c. 1, 3.

have it be a pledge of our glory to come, and everlasting happiness, and thus be a symbol of that one body whereof He is the head, and to which he would fain have us as members be united by the closest bond of faith, hope, and charity, that we might all speak the same things, and there might be no schisms amongst us." [1] Besides being an antidote by which we are preserved from mortal sin, it is a very probable opinion that if the Eucharist is received by one in a state of mortal sin, of which he is not conscious and to which he is not attached, that sin will be forgiven. For the sacraments give grace to all who put no obstacle in their way, and such a communicant can not be said to put an obstacle to the grace of the sacrament. But the entrance of grace expels all mortal sin from the soul. This is the teaching of St. Thomas [2] and many other theologians.

[1] Sess. xiii, c. 2.

[2] Summa, 3, q. 79, a. 3.

CHAPTER II

THE MATTER AND FORM OF THE EUCHARIST

1. THE remote matter of the Eucharist is twofold, wheaten bread and wine of the grape. Barley bread, or bread made from oats or rye, or any other kind of grain or vegetables or fruits, is invalid matter. The wheaten bread must be baked with water, not boiled, or mere dough. If baked with oil or milk or butter, it will be doubtful matter. The wine must be genuine juice of the grape, not made artificially; wine made from any other kind of fruit will be invalid matter. If the wine has become vinegar, it is changed substantially, and will not serve for Mass; if it has only begun to get sour, it will be consecrated validly, but the priest who uses it sins grievously. There is some controversy as to whether frozen wine could be consecrated. The rubrics prescribe that if the precious blood is frozen after the consecration it should be liquefied again by putting warm cloths about the chalice and then consumed. It is clear, then, that freezing does not change the species substantially so as to render Our Lord no longer present under them; it follows from this that freezing does not prevent the wine being consecrated.

Unfermented bread is used for the Eucharist in the Western Church, and fermented in the Oriental rites. Members of the two Churches are bound under grave precept to follow their respective rites, even if a Western priest were for a time in the East; but if there be only one

church in a place and of a different rite from one's own, the priest may say Mass according to either rite, and a lay person may in the same way receive holy communion.

Because water came forth from the opened side of Our Redeemer with His blood, the Church has commanded that in saying Mass a little water, not more than a fifth or at most a third part of the wine, should be mixed with the wine in the chalice. If the wine of a country is of a poor quality and difficult to keep, a little alcohol may be added to it to preserve it, but not so as to make more than 12 or 18 per cent. of the whole. No other matter may be added either to the flour or to the wine which are used for the Blessed Eucharist, and the greatest care should be taken both by bishops and priests to insure the use of only genuine matter in the confection of this sacrament.

2. The form of consecration for the bread is, "For this is My body," and for the chalice, "For this is the chalice of My blood of the New Testament, the mystery of faith, which shall be shed for you and for many unto the remission of sins." Any change in these forms which would make the sense different would also make them invalid.

There is a controversy among theologians as to whether the whole of the above form for the consecration of the chalice is essential, or whether it would be sufficient for the validity of the consecration to say only, "This is the chalice of My blood." It is very probable that these words alone constitute the essential form for the consecration of the chalice, though of course the fuller form must always be used. For these words alone signify the real presence of Our Lord; the rest are merely a further declaration or explanation of them. Besides, "This is My body," constitutes the valid form for the consecration of the bread,

and so by analogy, "This is the chalice of My blood," should constitute the valid form for the consecration of the wine.

3. For the valid consecration of the Eucharist the priest must not only use the proper matter according to the institution of Christ, but that matter must be physically present, not far distant from him, when he pronounces the form of consecration. This essential condition is required by the sense of the form, "This is My body," which indicates that the matter to be consecrated is near the priest, so that it can be indicated by the demonstrative pronoun. Hence a priest in one room could not consecrate bread and wine in another, or behind his back, or, as it would seem, locked up in the tabernacle. Moreover, the matter must be determined by the intention of the priest; he would not consecrate a host which had been left on the altar for him to consecrate, but about which he knew nothing, and which he had no intention to consecrate. A difficulty sometimes arises when a priest has been asked to consecrate the ciborium which is placed on the altar by the sacristan, but which the priest afterward forgets to take and place on the corporal for consecration. What is intended for consecration should be placed on the corporal and on the altar-stone of sacrifice. Inasmuch as this was not done, and it would be wrong to intend to consecrate a ciborium which had not been placed on the corporal, it would seem at first sight that such a ciborium is not consecrated. It is, however, better to make a distinction. If the priest had intended to consecrate the ciborium and during Mass had noticed its presence, though he did not advert to its being off the corporal, it would certainly be consecrated. If, on the contrary, after being notified in

the sacristy about consecrating the ciborium, he forgot all about it, and never adverted to its presence on the altar, the consecration will be doubtful; and hosts thus doubtfully consecrated should on no account be given as communion to the faithful, but should be consecrated conditionally in another Mass, or if they are few in number they might be consumed by the priest before taking the ablutions.

Furthermore, for the lawful consecration of the matter, the hosts must be whole, clean, and of the usual size and shape; the chalice and ciborium must be uncovered, and the consecration must be in Mass as it is prescribed to be said and under both kinds. If the ciborium or chalice are by mistake left covered, the consecration will be valid, for all the conditions required for validity are fulfilled. Hosts to be consecrated should be on the corporal at the offertory when the victim is set aside for the sacrifice, but if this has not been done, they may be received up to the canon, or for grave reason even up to the consecration, but the oblation should be mentally supplied.

CHAPTER III

THE MINISTER OF THE EUCHARIST

1. ONLY a priest can say Mass and consecrate the Eucharist, and a priest is also the ordinary minister who distributes holy communion to others. If, however, the priest is occupied and is unable to give holy communion himself, he may delegate faculties to a deacon who is the extraordinary minister of the Eucharist. In case of necessity, especially when there is danger of dying without receiving the Viaticum, and there is no priest or deacon to give it, a simple cleric, or even a lay person, may administer holy communion to himself, or to another. It was not very unusual in the primitive Church for laymen to do this, but nowadays the occasion would seldom arise.

2. Ordinary or delegated jurisdiction is required for the lawful administration of the Eucharist, and by the common law of the Church the right belongs exclusively to the parish priest whenever holy communion is of strict precept, as it is at the time of death and at Easter. By custom a priest may administer holy communion in any church where he has been allowed to say Mass to any of the faithful who ask for it.

Regulars have the privilege of being able at all times to give holy communion to their own members and de-

pendents who live under their roof. They may also give it to externs in their own churches at all times except Easter. By the common law of the Church, Regulars who, except in case of necessity, presume to administer Extreme Unction or the Eucharist as Viaticum to clerics or lay people without the leave of the parish priest, incur the penalty of excommunication reserved to the Holy See by the constitution of Pius IX, *Apostolicæ Sedis*. In Great Britain, and generally in the United States, parishes in the strict sense have not yet been erected, and the faithful in these countries may receive their Easter communion in any public church; and although the missionary rights of priests should be respected, still the above censure does not seem to affect transgressors of them.

3. All who have the cure of souls are bound to administer the Eucharist to their flock, not only when these are under an obligation to receive it, but whenever they reasonably ask for it. This obligation is grave, but it does not bind with proximate danger of death from catching disease or from some other cause, nor is a single refusal of the sacrament necessarily a grave sin, for the loss of it may easily be made up on another occasion. Priests who have not the cure of souls may sometimes be bound to administer holy communion, not out of justice but out of charity.

4. For the lawful administration of holy communion the minister must be free from all censures which deprive him of the right to administer it; he must be in the state of grace, and he must follow the rubrics laid down by the Church in the Missal and Ritual.

The proper time for those who wish to communicate to receive holy communion is in Mass after the communion of the priest. However, if there be a reasonable cause,

which need not be a grave one, communion may be given out of Mass, either before or after, and even in black vestments, either before or during or after a Requiem Mass, but in this case the blessing otherwise given to the communicants before or after Mass is omitted.

Pius X, by a decree dated May 8, 1907, declared that the faculty of giving holy communion to all the faithful present at Mass was to be understood as included in the faculty of saying Mass in a private oratory, saving the rights of parish priests. It may be given to the sick in danger of death at all times, but to the faithful generally it is forbidden to give communion on Good Friday, and on Holy Saturday before Mass. It should not be given at the Mass which is said at midnight on Christmas Day unless leave for it has been obtained, nor in the evening, nor at night.

The Blessed Sacrament should not be taken from the church except when it is carried to the sick, and then with all the marks of honor prescribed by the rubrics of the Ritual. However, in English-speaking countries the Holy Eucharist can not be taken to the sick publicly, so it is carried in a small pyx enclosed in a bag specially made for the purpose, and suspended by a cord or chain from the priest's neck. The priest should have on a stole underneath his coat.

NOTE. — Our author does not state any reason for holding that the priest should wear a stole underneath his coat when privately carrying the Holy Eucharist to the sick. It is certain that many priests, conscientious and well informed, do not observe this practice; and the existence of the obligation for the United States may be called in question. There is no rubric which can be ad-

duced to prove the obligation of wearing the stole during the journey to the house of the sick person; nor is there any general decree of the S. Cong. of Rites requiring it. In the Plenary Councils of Baltimore there is no word to suggest the existence of this obligation. The Second Plenary Council has a decree relating to the manner of bringing the Holy Eucharist to the sick (n. 263), as follows: "*Dolendum sane est rerum adjuncta, quæ apud nos obtinent, impedire quominus ea cum pompa, quam vult Ecclesia, ad infirmos deferatur Sanctissimum Sacramentum. Studeant itaque sacerdotes, ut interna animi devotione hujus pompæ defectum suppleant, simulque haud negligant, quantum in ipsis est, reverentiæ externæ, quæ Christo revera præsenti debetur, prospicere. Dum Sanctissimum deferant, vana et inutilia evitent colloquia: piæ potius contemplationi vel precibus dent operam. 'Delatio Sanctissimi Sacramenti ad urgentes tantum causas, atque ad actuale ministerii sacerdotalis exercitium coarctetur.' Quænam vero sit urgens causa, ex loci, temporis, aliisque adjunctis erit dijudicandum. Injungimus 'presbyteris strictam obligationem semper in hisce casibus Sanctam Hostiam super pectus deferendi. Numquam nisi in extrema necessitate vel ipsam Hostiam vel vas sacrum in quo servetur, stola saltem non induti attrectent. Cum in ecclesia Sanctissimum e tabernaculo extrahunt, semper superpelliceo et stola sint induti. Infirmis Sacram Eucharistiam ministrantes, præscripta Ritualis Romani, in quantum rerum circumstantiæ sinunt, diligentissime servent.*" We see from this decree that the bishops prohibit priests from handling the Blessed Sacrament or even the sacred vessel containing it, unless they wear a stole; and they prescribe that the priest, when taking the Blessed Sacrament from the tabernacle, should wear a stole and surplice.

Now, if the Fathers of the council thought that there was an obligation of wearing a stole not only when touching the Blessed Sacrament immediately on taking it out of the tabernacle, but also when carrying it to the sick-room, it should be expected that they would refer to the latter obligation as well as the former.

O'Kane, in his well-known work, "Notes on the Rubrics of the Roman Ritual," treats with minute detail of the manner of administering holy communion to the sick; yet he says nothing to show that a priest should wear a stole under his coat on his way to the house of the sick person. On the contrary, it is clear from this author that it need not be worn then. In n. 797 (second edition) it is said: "With us, the priest goes to the house of the sick person in his ordinary dress; but he should bring with him, or contrive to send before him, the vestments which the rubric requires him to wear." In the sentence immediately preceding he mentions what these vestments are, *viz.*, the surplice and stole. Hence, this writer supposes the priest to go to the sick person's house not wearing a stole, but bringing it with him or sending it before him. Again, in n. 838, discussing the case in which the priest has brought more than one consecrated particle in his pyx, whether he should, after administering holy communion to the sick person, give benediction of the Blessed Sacrament with the pyx containing another consecrated particle, O'Kane says: "In these circumstances, we think the priest should put the pyx into its case or covering, and give the benediction with it thus covered. He should then fasten it around his neck, as before directed; and after this, but not sooner, he may lay aside the stole and surplice." If the priest may lay

aside the stole after fastening the pyx, he need not wear the stole when carrying the Blessed Sacrament to another sick person or back to the church. The opinion of this author is of much weight, because his work on the rubrics received the special approbation of the S.C. of Rites and was declared to be "*vere commendabile et accuratissimum.*" Since the date of that approbation (February 14, 1868), there has been no decree of the S.C. of Rites condemning the opinion; nor has there been any prohibition issued against following it, at least for the United States. Attention may be also drawn to the excellent work written by Dr. Heuser, of Overbrook Seminary, "The Parish Priest on Duty." In this manual, which was prepared for the pastors, assistants, and theological students in the United States, the author has a section on the private administration of the Viaticum, and sets down the requisites therefor. At the conclusion there is a note to the effect that if the pyx be already in the tabernacle and contain the Blessed Sacrament, the priest "may take the pyx case from the tabernacle without being vested with surplice and stole and without lights." If the priest do not need a stole to take out the pyx and duly fasten it upon his breast, he does not need it afterward when carrying the pyx to the house of the sick person.

Perhaps so much might not be said upon this question, were it not that an esteemed writer on the sacred liturgy, Wapelhorst, holds the stricter opinion. In n. 284 of his work (sixth edition) he says: "*Deinde assumit, quæ requiruntur pro Viatico administrando; nempe Rituale, superpelliceum revolutum, stolam albam, quam imponit subtus vestem exteriorem, si fieri possit.*" In a note the author, in order to confirm this opinion, quotes a constitution of

Benedict XIV, wherein the following words are found: "*Ubi Turcarum vis prævalet et iniquitas, Sacerdos stolam semper habeat propriis coopertam vestibus: in sacculo seu bursa pyxidem recondat, quam per funiculos collo appensam in sinu reponat.*" It should be observed that this constitution, "*Inter Omnigenas,*" published February 2, 1744, was not for the entire Church, but only for Servia and the adjoining countries then suffering religious persecution from the Turks. It may be added that if this constitution be obligatory for the whole Church, it would follow that a priest can never carry holy communion privately, unless he be accompanied by one of the faithful in the absence of a cleric. The reason is that, immediately after the words of Benedict XIV, quoted by Wapelhorst, we find the following in the constitution: "*Et nunquam solus procedat, sed uno saltem fideli, in defectu clerici, associetur.*" No one, I suppose, holds that this latter regulation is obligatory in the United States. It may perhaps be urged that the extract from that constitution, including the portion quoted by Wapelhorst and the other portion regarding the necessity of a companion, is found in the appendix to the Roman Ritual, so that its insertion therein indicates its obligatory force everywhere. To answer this difficulty much could be said; let it suffice to notice that the appendix referred to is, as appears from its title-page, nothing more than a collection of blessings and instructions approved or permitted by the Holy See. It may be readily granted that a priest is permitted out of devotion to wear a stole under his coat when privately carrying the Blessed Sacrament to the sick; but that there is any precept or direction applicable to the United States does not appear. — END OF NOTE.

5. If a consecrated host falls on the ground or on the communion cloth, the place should be marked and afterward washed, and the water poured into the piscina. If the precious blood is spilled, the priest should suck it up as far as possible, and afterward the place should be well washed, scraped, and the water and scrapings poured into the piscina. If a consecrated host fall on the beard or clothes of a communicant, the place on which it fell need not be washed. If it falls on the breast or dress of a woman, she should take it reverently in her fingers and give it to the priest, who will then administer it to her as communion.

If, while he is still vested, a priest discovers what seem to be particles consecrated in his Mass, the rubrics direct that he should consume them, even though no longer fasting; if he has put off the sacred vestments, or if the particles do not belong to his Mass, they should be reserved for another priest to consume after his own communion, or placed in the tabernacle.

If the Blessed Sacrament is vomited by a sick man, the sacred species should be carefully separated and placed in a vessel in the tabernacle until they corrupt, when they should be thrown into the piscina. Corruption will more quickly take place, and any disagreeable odor will be avoided, if a little water be put into the vessel.

CHAPTER IV

THE RESERVATION OF THE EUCHARIST

1. THE Ritual prescribes that the parish priest, or one who has the cure of souls, should take care that some consecrated particles, in sufficient number for the use of the sick and for the communion of the rest of the faithful, should be always reserved in a clean pyx of solid and decent material, well closed with its own lid, covered with a white veil, and as far as possible in an ornamented tabernacle kept locked with a key. This key should be in the keeping of the priest, not in that of the sacristan or other person. As a rule the pyx or ciborium is of silver, and gilded inside. There seems to be no strict law prescribing that it should be consecrated or even blessed, though there is a form for blessing it in the Ritual.

The Blessed Sacrament, then, must be thus reserved for the use of the faithful in all cathedrals, parish churches, and chapels of ease attached to parochial churches. Religious Orders of men and women who take solemn vows have the privilege of reserving the Holy Eucharist in their churches. It can only be reserved in other churches or oratories by special indult from the bishop, or from the Holy See in the case of strictly private oratories.

NOTE. — Regarding the reservation of the Blessed Sacrament, the Second Plenary Council of Baltimore (n. 265)

has the following: "*Conservari debet in ecclesia Cathedrali, et in quavis ecclesia parochali ut ad infirmos, data occasione, deferri possit. In aliis vero pluribus vel ecclesiis vel sacellis conservari potest vel ex lege, vel ex Pontificis indulto. Qua in re Ordinarios hortamur ut curent, uti nonnisi debita præhabita licentia hoc maximo privilegio quævis ædes sacra utatur.*" Bishops are restricted in their powers to grant leave for reserving the Blessed Sacrament, as appears from a decree of the S. C. of Rites (March 8, 1879). "*Potestne Episcopus jure proprio concedere facultatem asservandi SSmum Sacramentum:* 1. *In Ecclesiis seu Capellis publicis quæ tamen titulo parochiali non gaudent, etsi utilitatibus Parœciæ inserviant;* 2. *In Capellis piarum Communitatum publicis, id est quarum porta pateat in via publica vel in area cum via publica communicante et quæ habitantibus omnibus aperiuntur;* 3. *In Capellis seu Oratoriis interioribus piarum Communitatum, quando non habent Capellam seu Oratorium publicum in sensu exposito, ut evenit,* e.g., *in Seminariis?*" The response to these questions was: "*Implorandum est indultum a Sancta Sede quoad omnia postulata.*" See Decr. Auth., n. 3484. From an examination of the acts of various provincial councils in the United States it is clear that many provinces received an indult of this kind more or less extensively. Thus, on July 25, 1858, on the occasion of holding the Ninth Provincial Council of Baltimore, the faculty was granted to this ecclesiastical province in virtue of which the bishops could grant permission for the Blessed Sacrament to be kept in the chapels of Religious communities of women. See Coll. Lacensis, vol. 3, p. 180. In the same year (November 10), on the occasion of holding the Second Provincial Council of Cincinnati, the bishops of that province received

the faculty of permitting the Blessed Sacrament to be kept in Religious communities without enclosure: "*Potestatem tribuit Episcopis permittendi communitatibus Religiosis absque clausura viventibus conservationem SSmæ Eucharistiæ.*" See Coll. Lacensis, vol. 3, p. 212. On April 17, 1859, the privilege was given to the archbishop of St. Louis and his suffragans that the Blessed Sacrament might be kept in Religious houses although they were not canonically erected. In the archdiocese of St. Louis it is permitted that in the oratories of Sisters having a Religious house the Blessed Sacrament may be kept, provided that four persons live in the house. See Diocesan Statutes of St. Louis, n. 68. As regards other dioceses of this country it may be safely said that there is hardly one that does not possess an indult with less or more limitation for reserving the Blessed Sacrament. — END OF NOTE.

2. The Ritual further prescribes that the tabernacle should be decently covered with a veil, that nothing else besides the Blessed Sacrament should be put in it, and that it should be placed on the high altar, or on another if this would conduce to greater reverence toward the Holy Eucharist, so that it would be no obstacle to sacred functions or ecclesiastical offices. Several lamps or at least one should always be kept burning before it night and day. The lamps should be fed with olive oil, but if the church is very poor the bishop may allow vegetable or mineral oil to be used. Gas or electric lamps should not be tolerated. One lamp must be kept burning under pain of grievous sin.

The veil of the tabernacle should be white or in keeping with the color of the day, but never black.

3. The particles taken for consecration should be fresh, not more than fifteen days or at most a month old, and they should be renewed every eight or at most fifteen days, though in this matter regard should be had to the dampness or dryness of the place and season.

NOTE. — It may be well to consider this question more in detail so far as the United States is concerned. The Roman Ritual requires the consecrated particles to be renewed frequently, "*Sanctissimæ Eucharistiæ particulas frequenter renovabit*" (Tit. 4, cap. 1, n. 7). The *Cæremoniale Episcoporum* prescribes this renovation to be made once a week (Lib. 1, cap. 6, n. 2). Benedict XIV, in his constitution, "*Etsi Pastoralis*" (May 16, 1752), ordered for the Greeks in Italy that the sacred species should be renewed every eight, or at least every fifteen days. Gasparri in his treatise, *De SS. Eucharistia* (vol. 2, n. 1013), concludes that in the Western Church the species should be renewed "*Singulis octo diebus juxta norma Cæremonialis: Græcis autem aliisque Orientalibus permissum esse hanc renovationem protrahere ad singulos quindecim dies.*" He then adds that many excuse from all sin, even in the Western Church, if the renewal takes place within fifteen days, provided that the condition of place and time exclude all danger of initial corruption.

It was evidently the intention of the Fathers of the Second Plenary Council of Baltimore to urge the observance of the *Cæremoniale Episcoporum* regarding the weekly renewal of the sacred species, for they say (n. 268): "*Rituale Romanum jubet particulas Sanctissimæ Eucharistiæ frequenter renovari: et Cæremoniale Episcoporum id semel saltem in hebdomada faciendum præcipit. Hanc regulam,*

quam S. Rituum Congregatio nedum sæpius confirmavit, verum stricte et rigorose obligare declaravit, sacerdotibus omnibus fideliter servandum serio inculcamus." The decrees of the Second Plenary Council of Baltimore were declared by the Fathers of the Third Plenary Council in 1884 to be still in force, except those which were changed or abrogated in the latter council. (Cf. p. 3, Decr. Conc. Balt. Tertii.) But regarding the law of renewing the species the Third Plenary Council made no change or abrogation; nor since that time in this country has there been any sign of alteration in the Church's discipline on the question. Hence it does not appear that in the United States we are at liberty to follow the opinion of those theologians who hold that the renewal of the sacred species may be deferred for two weeks. (Cf. Lehmkuhl, vol. 2, n. 132.) Still less is it permissible in this country to follow the opinion of those who allow a month to elapse before it becomes necessary to renew the sacred species. (Noldin, De Sacramentis, n. 129.) Whether some provincial councils elsewhere were content to require that the renewal should not be deferred beyond two weeks or a month, or whether the Holy See directly granted for a particular locality permission to defer the renewal for two weeks, neither of these ordinances would seem to be applicable to the United States, where the regulation of the *Cæremoniale Episcoporum* is required to be observed. The Second Plenary Council of Baltimore (n. 268) says that the S. Cong. of Rites has not only confirmed the rule of the *Cæremoniale Episcoporum*, and for this purpose it refers to three decrees of that Congregation, but also declares that another decree of this Congregation pronounces the rule to be strictly obligatory, "*stricte et rigorose obligare.*" Nothing then

remains, it would seem, but to admit the obligation so clearly set forth by this council. Even since its celebration the S. Cong. of Rites has repeated the decision. A question was proposed whether the custom existing of renewing the species once or twice in the month could be continued: "*In ecclesiis hujus diœceseos servari ne potest consuetudo renovandi SSmam Eucharistiam semel vel bis in mense; licet qualibet hebdomada juxta Cœremoniale Episcoporum eadem SSma Eucharistia foret renovanda?*" The answer was (September 12, 1884), "*Servetur dispositio Cœremonialis Episcoporum* (lib. 1, cap. 6, n. 2)."

Assuming, therefore, that there is in the United States a precept which requires the weekly renewal of the sacred species, the question arises, what sin is committed if a priest defer this duty. It is certain that while this precept of renewing the species binds *sub gravi*, it admits of *parvitas materiæ*, so that a short delay beyond a week would not constitute a mortal sin, unless some serious danger of the corruption of the species would arise. Prescinding from this danger, it may be held that the delay of a week would not be a mortal sin, and probably even the delay of a month. Gasparri (n. 1013) says that the particles to be consecrated should be fresh, *i.e.*, recently made, and that the time for necessary renewal depends to some extent upon the degree of freshness, so that if the hosts at the time of consecration had been made twenty-five days the renewal could not be protracted for eight days. (See also Wernz, Jus Decretalium, vol. 3, n. 551 in nota 219.) It seems safe to hold that a reasonable cause of deferring the renewal for a day or even for a few days would excuse from venial sin. Thus during a novena the

host for Benediction might be kept for nine days; and a number of small hosts which would be distributed to the faithful within a few days might be kept before the purification of the ciborium. (See O'Kane, n. 620.) — END OF NOTE.

CHAPTER V

THE SUBJECT OF THE EUCHARIST

Article I

The Necessity of the Eucharist

1. THE Holy Eucharist can be received only materially by one who is not baptized and who consequently is incapable of receiving the other sacraments; it is received spiritually by one who ardently desires to receive it with the proper dispositions; it is received sacramentally when it is really received by one who has been baptized. The sacramental reception of the Eucharist is not a necessary means of salvation, for it is a sacrament of the living and supposes the grace of God in the soul, and a soul in the state of grace has everything which is necessary for salvation. Divines dispute whether the Eucharist is a necessary means for preserving the life of grace in the soul. It is, indeed, the ordinary food of the Christian soul, as bread is the ordinary food of the body, but as there is other spiritual food which may be taken, and notably prayer, and this may supply for the want of the ordinary food, the better opinion holds that the Eucharist is not strictly necessary even for the preservation of the life of grace in the soul. However, it is certainly necessary by divine and ecclesiastical precept. The divine precept is manifest from the words of Our Lord: "Unless you eat the flesh of the Son of man and drink His blood you shall not have

life in you." [1] Not that these words imply that communion under both kinds is of divine law, for he who receives the sacrament under one species receives the body and blood of Christ with His soul and divinity. Moreover, as the Council of Trent explains,[2] He who made use of those words also said, "He that eateth this bread shall live forever." [3] The Church, therefore, for just and weighty reasons has forbidden communion under both kinds, using the power given to her by Christ with reference to the dispensation of the sacraments, though she has no authority to change their substance.[4]

This divine precept must be fulfilled at least at the time of death, when it is of the greatest importance, and also sometimes during life. How often it must be received to satisfy the divine precept is uncertain, but the Church has determined the divine law by ordering all the faithful who have come to years of discretion to receive holy communion at least once a year, at Easter.[5] Those, however, who desire to lead a good Catholic life are by no means content with yearly communion; they receive it once a month or still more frequently.

2. According to the general rule, children become subject to and bound to obey the positive laws of the Church when they reach the age of seven. The Ritual, however, says of the Eucharist that it should not be administered to those who, on account of their tender years, have not as yet sufficient knowledge and relish for this sacrament. According to the common practice, children make their first communion between the ages of nine and twelve, but if a child over seven is in danger of death, Viaticum should

[1] John vi. 54. [2] Sess. xxi, c. 1. [3] John vi. 55.
[4] Trent, sess. xxi, c. 2. [5] 4 Lat. c. 21.

be given to it, even though it has not yet made its first communion. (See Appendix E, page 510.)

NOTE. — Regarding the age for first communion, the Second Plenary Council of Baltimore (n. 261) gives the following regulation: "*Hæc vero regula generalis, quæ tamen suas admittat exceptiones, statui videtur tuto posse, neminem scilicet, ordinarie loquendo, ante decimum annum Angelorum Panis participem fieri debere, nec post annum decimum quartum cuivis cæteroquin digno eum esse negandum. Meminerint vero sacerdotes, tantam non desiderari ætatem, ut quis in articulo mortis Sanctissimo Viatico possit et debeat muniri. E contra male se gererent, nec leviter derelinquerent, si pueros perspicacis ingenii sine Viatico e vivis excedere sinerent, ea inepta moti ratione, quod numquam antea ad Eucharisticam mensam fuerint admissi.*" Whether according to this decree the tenth year should be merely begun or completed is not quite clear; similarly with regard to the fourteenth year. It might happen that a child could and should be admitted to first communion earlier than the tenth year, because the use of reason has been sufficiently reached, or the years of discretion required by the Fourth Council of Lateran and by the Council of Trent; or it might occur that a child of fourteen years of age has not received the necessary amount of instruction for receiving holy communion. The general rule given above does not apply to such persons, and indeed this is implied in the words, "*quæ suas admittit exceptiones.*" The bishops did not propose to legislate for those special cases, since there is a general law of the Church determining the divine law laid down by the councils of Lateran and Trent that all should receive holy communion as soon as they have arrived at the years of discretion, that is, have sufficient

knowledge of the sacrament of the Eucharist. Hence, if a pastor have in his parish a child under ten years of age, well instructed regarding this sacrament, there would be an obligation of admitting him to first communion. This admission would not interfere with the public first communion, which could be afterward made along with the other children of the parish. A bishop, while he could not prevent a child under ten years, if properly instructed, from being privately admitted to holy communion, may very well make a regulation for public first communion that a child could not make it before that age. This is manifest from a response of the S. C. of the Council given to the bishop of Annecy on July 21, 1888. This bishop had made for his diocese the following statutes: "1. *Nullus puer masculus aut fœmina admittetur ad primam communionem peragendam nisi,* (a) *expleverit duodecimum annum,* (b) *exacte secutus fuerit catechismum per duos ultimos annos . . .*; 2. *Ab exordio anni* 1885 *prima puerorum communio locum habere nequibit in qualibet parochia diocesis hujus ante diem vigesimum mensis Maii.*" A question was then proposed to the Holy See, "*An decreta episcopi Anneciensis sint confirmanda vel infirmanda in casu?*" The answer was: "*Attentis locorum ac temporis circumstantiis, affirmative ad primam partem juxta modum.*" The S. C. C., explaining this *modus,* added: "*Ne episcopus parochos prohibeat ab admittendis ad primam communionem iis pueris de quibus certo constat eos ad discretionis ætatem juxta Conciliorum Lateranensis Quarti et Tridentini decreta pervenisse.*" Gasparri (n. 1169, *De SS. Eucharistia*) mentions that the Sovereign Pontiff declared in an audience, July 23, 1888, that the words, "*Ad primam communionem,*" "*esse intelligenda ad exclusionem primæ communionis in forma*

solemni." This author then adds: "*Ex his igitur apparet parvulos qui ante indicatam ætatem apti inveniuntur, posse et debere admitti ad primam communionem in forma privata, non autem ad primam communionem in forma publica et solemni in diocesi recepta: pro quo decreto episcopali standum est. Hanc fuisse mentem S. C. respondentis et Pontificis responsionem approbantis patet per se et Præfectus ejusdem S. C. expresse etiam declaravit.*"—END OF NOTE.

It is a disputed point whether one who is now in danger of death and who has within the last few days received holy communion is bound by divine precept to receive Viaticum. Although any good Catholic would certainly receive it again, yet the obligation to do so is not clear, because the previous communion in all probability satisfies the divine law. If one becomes dangerously ill on the day on which he has received holy communion out of devotion, it is similarly a disputed point whether he may, or is bound to, receive it again as Viaticum. Ordinarily, indeed, no one should receive holy communion twice on the same day, but in this case he may do so, though he is not bound to do so, on account of the variety of opinions.

3. Holy communion should not be given to those who have lost the use of reason, but if they have lucid intervals it may then be given if there be no danger of irreverence. To those who are in danger of death, and have lost the use of their senses, it may be given if they can swallow, and there is no danger of irreverence; and it should be given as Viaticum to criminals condemned to death if they are in the proper dispositions. Reverence forbids it to be

given to those who are suffering from constant coughing, and to those who can not retain any food on the stomach, unless they have been free from vomiting for six hours or so.

Article II

The Dispositions Requisite for the Reception of the Eucharist

Section I

The Dispositions of the Soul

1. Besides having sufficient knowledge of what the Eucharist is, he who receives it should be in the state of grace and free from mortal sin. The presence in the soul of venial sin unrepented of is indeed a defect and an obstacle to the fullest outpouring of God's grace, but it is not a new sin to receive holy communion with only venial sins on the soul. But it is a grievous sacrilege to receive the Eucharist while conscious of being in mortal sin, "For he that eateth and drinketh unworthily, eateth and drinketh judgment to himself, not discerning the body of the Lord." It is not sufficient for one who is conscious of mortal sin to recover the state of grace by making an act of perfect contrition before communion; he is bound to go to confession. This is taught us by the Council of Trent:[1] "Wherefore he who would communicate ought to recall to mind the precept of the Apostle, *Let a man prove himself.* Now ecclesiastical usage declares that necessary proof to be, that no one conscious to himself of mortal sin, how contrite soever he may seem to himself, ought to

[1] Sess. xiii, c. 7.

approach to the sacred Eucharist without previous sacramental confession. This, the holy synod hath decreed, is to be invariably observed by all Christians, even by those priests on whom it may be incumbent by their office to celebrate, provided the opportunity of a confessor do not fail them; but if in an urgent necessity a priest should celebrate without previous confession, let him confess as soon as possible." No one, then, who is conscious of mortal sin may go to holy communion without sacramental confession, unless he is under some necessity of receiving the Eucharist, and there is no opportunity of going to confession. There will be such necessity as is here contemplated if a priest has to say Mass for his people on a day of obligation, or to consecrate the Viaticum for a dying person, or if communion must be received to avoid scandal, or to satisfy the Easter precept. There is no opportunity of going to confession if there is no priest present who can give absolution, and it would be a serious inconvenience to go to one at a distance. Even when in these circumstances a priest who is in sin has said Mass with contrition indeed, but without confession, he is commanded by the Council of Trent to go to confession as soon as possible afterward. This is a strict ecclesiastical law, but according to the mind of the council it only binds priests, not laymen.

2. When one has been to confession with a view to going to holy communion, but forgot to mention some grievous sin which he afterward remembers, he is not obliged to repeat his confession before communion; it will be sufficient if he mentions it in his next confession. The reason is because the forgotten sin was indirectly forgiven by the absolution which he received, and he has

proved himself sufficiently according to the words of the Apostle.

Even if there be not sufficient time to make a full confession before communion, still confession is obligatory, as it is also when the penitent has cases reserved to the Pope, for now in case of necessity any confessor may absolve directly from papal cases. If the only serious sins which the penitent has are reserved to the bishop, he is not bound to go to confession unless there is a priest present who has faculties for reserved cases, and it is a probable opinion that this holds even if with reserved sins he has grave sins which are not reserved.

3. The old controversy about frequent communion was finally settled by the decree of Pius X, December 20, 1905. The mind of the Church on the question is therein clearly expressed. The decree says in effect: Let frequent and daily communion, a practice which is very much desired by Christ our Lord and by the Catholic Church, be open to all the faithful of whatever rank and condition they be, so that it may not be refused to any one who is in the state of grace, and who approaches the Holy Table with a good and upright intention. This good intention consists in a desire to fulfil the divine will, to be more closely united with God, and by that divine remedy to fight against one's weaknesses and defects, and not to approach out of routine, or vanity, or worldly motives. Venial sin is not an obstacle to daily communion, although it is in the highest degree becoming that daily communicants should be free from all fully deliberate venial sin. The sacraments, it is true, produce their effect *ex opere operato*, and yet because they produce greater effect in those who are better disposed, therefore care must be taken to make

proper preparation for holy communion and due thanksgiving afterward. The confessor's advice should be asked in order that daily communion may be practised with more prudence and with greater fruit, but the confessor should not prohibit daily communion to any one who is in the state of grace and who approaches with an upright intention. Parish priests, confessors, and preachers should frequently exhort the faithful to the practice of daily communion, according to the approved teaching of the Roman Catechism, or the Catechism of the Council of Trent.[1]

Section II

The Dispositions of the Body

1. Although God looks to the soul and its dispositions rather than to externals, yet, as the Ritual says, those who communicate should approach the altar with humble deportment, and their dress and everything about them should show forth the reverence which they feel for the Blessed Sacrament. Reverence taught the first Christians that the Holy Eucharist should be the first food taken in the day, so that fasting communion very soon came to be a universal practice in the Church. St. Augustine says that it was the custom throughout the whole world in his time, and he traces it back to the times of the Apostles.[2] The Council of Constance says: "This present council declares, decrees, and defines, that although Christ instituted and gave this venerable sacrament to His disciples under both species of bread and wine after supper, yet notwithstanding, the laudable authority of the sacred

[1] Pt. ii, c. 4, q. 58. [2] Decretum Gratiani, c. 54, D. 2, de consec.

canons and the approved custom of the Church has and keeps this observance that this sacrament ought not to be consecrated after supper nor received by the faithful unless they be fasting, except in case of sickness or of some other necessity allowed and admitted by law and by the Church." [1]

The rubrics of the Missal [2] contain the following: "If any one has not kept fast after midnight, though he has taken only water or other drink or food, even as medicine, and in however small a quantity, he can not communicate or celebrate. If remnants of food remaining in the mouth are swallowed, they do not hinder communion, since they are not taken as food but with the saliva. The same holds good if in washing the mouth a drop of water is swallowed inadvertently."

The law of the Church, then, with reference to fasting communion is that the Eucharist may not be received by one who has not kept strict fast from all food and drink, even in the smallest quantity, since midnight. If holy communion is received shortly after midnight, there is no obligation to fast for some time before midnight, although reverence would dictate the advisability of such a course. The law of fasting has been made out of reverence for the Blessed Sacrament, so that violations of it are against the virtue of religion, and sacrilegious.

To constitute a violation of the fast, what is taken must be of the nature of food or drink. Pebbles, wood, paper, hairs, are not food, and if swallowed do not hinder communion. The same is probably to be said of bits of the nails of the fingers, which some people have a habit of biting. The food or drink must also be taken as food or

[1] Sess. xiii. [2] De def. ix.

drink, not *per modum respirationis*, as is said, and must be from without, not from within the mouth. Taking snuff, or smoking, or inhaling a flake of snow with the breath, do not, then, hinder communion, nor the swallowing of blood from the gums or from inside the lips.

Midnight may be reckoned according to the time publicly observed in the place, or by the true time according to the sun, or by the mean time.

2. The law which prescribes fasting communion is a positive ecclesiastical law and admits of exception and excuse. Thus, when in danger of death from whatever cause, one may receive holy communion not fasting. This may also be done if it is not possible to abstain from communion without grave scandal or serious loss of reputation; or when the Blessed Sacrament is in danger of being profaned; or in order to complete the sacrifice of the Mass left unfinished by another priest from sudden illness; or probably in order to consecrate the Viaticum for a dying person who otherwise would be deprived of it. The common opinion is that Mass may not be said by a priest not fasting merely in order that his people may hear Mass on a Sunday; but this reason, taken together with some other, might justify the action.

There used to be a controversy among divines as to whether one who is sick but not in danger of death, and yet can not observe the fast before communion, may be allowed sometimes to communicate not fasting. This controversy has to a great extent been set at rest by the decree of Pius X, December 7, 1906. This decree "kindly allowed those who have been sick in bed for a month, without a well-grounded hope of their speedy recovery, although they may have taken something by way of

drink, to receive with the advice of their confessor holy communion once or twice in the week, if they live in houses where the Blessed Sacrament is reserved, or where Mass can be said by indult, and in other cases once or twice a month; with the obligation of observing the rubrics of the Ritual on the point."

After receiving Viaticum a sick person who continues to live for some time afterward may receive holy communion again, practically as often as his devotion urges him thereto and the priest's occupations will allow of its being brought to him. As long as he remains in danger of death, holy communion should be given as Viaticum, with the form, *Accipe frater.* No merely material uncleanness without moral fault, or mere bodily unsightliness, is a bar to holy communion. Married people are advised to abstain from marital intercourse before going to holy communion, but there is no strict obligation to do so.

PART II

THE EUCHARIST AS A SACRIFICE

CHAPTER I

THE NATURE OF THE SACRIFICE OF THE MASS

1. THE Council of Trent teaches that the Eucharist is not only a sacrament but is also a sacrifice, instituted by Our Lord at the Last Supper to represent and perpetuate the memory of the sacrifice which He was about to offer on the cross, and to apply its fruits to the souls of men. "He therefore, Our God and Lord, though He was about to offer Himself once on the altar of the cross unto God the Father by means of His death, there to operate an eternal redemption; nevertheless, because that His priesthood was not to be extinguished by His death, in the last supper, on the night in which He was betrayed — that He might leave to His own beloved Spouse the Church a visible sacrifice, such as the nature of man requires, whereby that bloody sacrifice, once to be accomplished on the cross, might be represented, and the memory thereof remain even unto the end of the world, and its salutary virtue be applied to the remission of those sins which we daily commit — declaring Himself constituted a priest for ever according to the order of Melchisedec, He offered up to God the Father, His own body and blood under the species of bread and wine; and under the symbols of those same things He delivered (His own body and blood) to be

received by His apostles, whom He then constituted priests of the New Testament; and by those words, *Do this in commemoration of Me*, He commanded them and their successors in the priesthood to offer (them); even as the Catholic Church has always understood and taught." [1]

A sacrifice is defined to be an offering of some visible object made to God by the performance of a sacred action on the part of a priest, or publicly deputed minister, by which we confess the supreme lordship of God. A sacrifice, therefore, differs from an ordinary offering in that it is an act of public worship paid to God alone by a duly authorized minister, who by slaying the victim or in some way changing it, proclaims the supreme dominion of God over all things.

The sacrifice of the Eucharist is called the Mass, and it may be offered for all the ends for which the various sacrifices of the Old Law were instituted by God. It is the supreme act of worship which we pay to God, and under this respect it is called latreutic; it is eucharistic, inasmuch as through it we render thanks to God for His graces and benefits; it is impetratory, inasmuch as it placates the anger of God which has been roused against sin and the sinner; and it satisfies the justice of God and thus remits the punishment due to sin.

The introductory portion, up to the offertory, is called the Mass of Catechumens, the principal parts of the Mass being the offertory, the consecration, and the communion. There is much difference of opinion among divines as to what constitutes the essence of the sacrifice of the Mass. Some place its essence in the communion, others in the consecration, others in the consecration together with the

[1] Trent, sess. xxii, c. 1.

communion. More probably the consecration of both species, by which the death of Christ is mystically represented by the separate consecration of the bread and wine, contains the whole essence of the sacrifice. The question belongs rather to dogmatic than to moral theology.

2. The Mass is a representation and a reproduction in an unbloody manner of the sacrifice of Our Lord on the cross. The principal minister, Jesus Christ, is the same; the victim is the same; the only difference is the manner of offering, as the Council of Trent teaches. A rightly ordained priest is the secondary minister, who in the name of Christ and of the Church offers the sacrifice to God. In so far as it is the action of Christ, the Mass produces its effect like the sacraments *ex opere operato*, and does not depend for its efficacy on the holiness or other dispositions of the priest. But it is also the action of the priest, and of the faithful in whose name he acts; and under this respect it produces its effect *ex opere operantis*.

All the faithful, by virtue of the communion of saints, but especially those who assist at Mass, partake of its fruits and benefits. Those fruits are, as we have seen, latreutic, eucharistic, impetratory, propitiatory, and satisfactory; so that in the Mass we have a most excellent means of fulfilling all the ends of religion. By it and through it we offer to God the highest act of worship which it is in our power to offer; we give Him thanks for His continual benefits to us, we ask in the most efficacious manner for what we and others stand in need of, we propitiate His just anger, and make satisfaction for our sins.

The priest who celebrates performs an action in the highest degree pleasing to Almighty God, and meritorious for himself. Moreover, just as prayer may be offered for

a special intention, and as the sacrifices of the Old Law were offered for the needs of those who presented the victim, so the Mass also may be celebrated by the priest for some definite intention. The special or ministerial fruit of the Mass is thus applied by the priest according to the intention with which he offers it.

3. Apart from special prohibitions, the Mass may be offered for all those for whom the sacrifice of the cross was offered, and whom it can benefit. It may be offered for all the faithful, living and dead. The Council of Trent defined that the souls in purgatory are helped by the sacrifices of the faithful, and it is at least theologically certain that the fruits of the Mass are to some extent which is known to God applied to them *ex opere operato*, when Mass is said for that intention. It may also be offered for the conversion of infidels, and in thanksgiving for all the graces and glory which God has bestowed on the blessed in heaven. The damned in hell can receive no benefit from our prayers or sacrifices. The Church, indeed, by her sentence deprives excommunicated persons of the common suffrages of the faithful, but theologians dispute about the effect of this law with reference to the application of the Mass to excommunicates. Some hold that it affects only such as are to be avoided on account of being excommunicated, such, namely, as have been excommunicated and denounced by name, or notorious strikers of clerics whose crime can not be kept secret. Others hold that the prohibition to say Mass for excommunicated persons extends even to such as do not come under the two heads just mentioned, and who are tolerated according to the decree of the Council of Constance, *Ad vitanda*. Others again maintain that the prohibition does

extend to all excommunicated persons, but that it is a law which affects only the public offering, not the private offering of Mass for such people. The latter opinion seems certainly probable.

4. Infinite is the worth and dignity of the sacrifice of the Mass, for it is the same as the sacrifice on Calvary, which was capable of redeeming innumerable worlds. This is acknowledged by all theologians, but they are not agreed as to whether the actual fruit derived from a Mass is also infinite. Those fruits are, indeed, greater or less in proportion to the dispositions of the person to whom they are applied. But while St. Alphonsus and others are of opinion that a Mass offered for any number of intentions will benefit each one as much as if it were offered for him alone, others hold that the fruit of a Mass is determinate in quantity, and that if it is offered for many each one receives less than he would do if it were offered for him alone. The latter seems the preferable opinion, as it explains better the practice of the Church according to which Mass is offered for individuals, living and dead. If the first opinion were correct, charity would require that every Mass should be offered for all who are in need, for no individual would be the loser; every one would derive all the benefit from the Mass of which he was capable. This opinion, too, is more in keeping with the nature of the sacraments, of which the fruits seem to be limited in quantity. Otherwise there would be no use in administering several sacraments to a dying person when out of his senses, as is the practice of the Church. Whichever opinion be true, it is against justice to offer only one Mass in satisfaction of the obligation of saying several, when several stipends have been received. Alexander VII

condemned the following proposition: "It is not against justice to receive stipends for many Masses and to say only one. Neither is it against fidelity, even if I promise on oath to him who gives a stipend that I will not offer the Mass for any one else."

Nothing, however, prevents the priest from having a second intention, as it is called, even when he says Mass for a stipend. By this second intention the priest intends that if for any reason the Mass can not benefit him for whom the first intention offers it, then the fruit may go to the second. Or, if in fact it be true that the fruit of a Mass is infinite, and capable of equally benefiting any number of persons, then the priest by his second intention desires that others should benefit by his Mass.

CHAPTER II

THE APPLICATION OF MASS

1. THE application of a Mass is the intention with which the priest who says it wishes that it should accrue to the benefit of a certain person or persons. Such a special act is only required for the application of the ministerial or special fruit, as it is called; for the priest himself derives fruit from his Mass, as likewise do those who assist at it, and the faithful in general, without any special application.

As it belongs to one who prays to choose the intention for which he offers up his prayer, so the application of his Mass belongs to the priest. A superior may indeed prescribe the intention for which a Mass is to be offered, but he who celebrates the Mass must make the actual application. This should be done before the consecration is finished, for according to the *common opinion* the essence of the Mass consists in the consecration, and an action can not receive its direction from an intention which is only formed after the action is accomplished. Probably, however, it will be sufficient if the intention is formed between the two consecrations.

2. It is not necessary that the intention by which Mass is applied should be actual, or even virtual; it is sufficient if it be habitual, or made once for all and not afterward revoked.

When Mass is said for a stipend it is not necessary for the priest to know precisely what the intention is for which he is desired to say Mass; it is sufficient if he say Mass for the intention of the giver of the stipend. Clement VIII forbade priests to offer Mass for the first who should give a stipend for that purpose, and if no one actually intended to ask for a Mass when a priest celebrated with such an intention the Mass would not be applied.

A priest does not sin if he celebrates without any special intention, but it is always better to have one, as then the Mass will be more fruitful. When a priest celebrates for a stipend he may not divide the fruits of the Mass, applying the satisfactory or other fruit to the intention of the giver, and another fruit to some other intention. The whole fruit of the sacrifice must go to the giver of the stipend. When, however, a Mass is ordered by a superior in thanksgiving for some blessing, it will not be wrong to apply the other fruits for other intentions which in no way interfere with that prescribed by authority.

CHAPTER III

THE OBLIGATION OF APPLYING MASS

1. PRIESTS may be bound to say Mass for a definite intention on various grounds. Those who hold a benefice are frequently obliged to say Mass, either every day or on certain fixed days, for the intentions prescribed by the founder of the benefice. The conventual Mass, which should be said every day in cathedral, collegiate, and conventual churches, ought to be applied for the benefit of the souls of benefactors. In English-speaking countries, however, there are few beneficed clergy, and so questions concerning their obligations are hardly practical.

The Council of Trent [1] declares that by divine precept it is enjoined on all who have the cure of souls to offer sacrifice for their flock. Bishops, therefore, and regular prelates, who have the full cure of souls, are bound by divine law to say Mass for those committed to their charge. Parish priests are of ecclesiastical institution, and they have not the full cure of souls committed to them. How far their duties extend depends on ecclesiastical law. That law obliges them as well as bishops to say Mass for their flock every Sunday and holyday of obligation, even on those feast-days of obligation which have been suppressed. This obligation is at the same time real and personal. It is real in the sense that if for any reason

[1] Sess. xxiii, c. 1, de Ref.

a bishop or parish priest can not fulfil it on any particular day, they are under the obligation of providing that it should be fulfilled by some other priest. It is personal in the sense that they must as far as possible fulfil it in person; it will not be sufficient to substitute another priest in their place.

As missionary priests in Great Britain and in the United States are not parish priests, though they have the cure of souls, the question whether they are bound to offer Mass for their flock like parish priests depends on whether the Church has annexed this obligation to their office. The Sacred Congregation de Propaganda Fide declared, December 3, 1866, that they are not strictly bound to say Mass for their flock, although it is becoming in charity that they do so.

2. The ecclesiastical superiors of priests may issue a command that Mass be applied for some special intention. When this is done the command must of course be obeyed by all whom it concerns. The matter of such a precept is certainly grave, and so there will be a serious obligation of complying with it, if the superior intended to issue a strict precept. This, however, is not always or necessarily the case; and in particular instances, if there is question of determining the gravity of an obligation arising from such a precept, the intention of the superior who gave it will have to be examined according to the ordinary rules of interpretation.

3. A priest may bind himself by promise to say Mass for a particular intention, and then he will be bound to say it either in justice or at least out of fidelity, just as he is bound to fulfil his other promises.

4. Finally, priests are bound in justice to say Mass for

the intention of those from whom they have received a stipend for the purpose. The stipend is not the price of the Mass, for this can not be bought and sold without committing the grave sin of simony. The stipend is given to provide for the support of the priest, who in return undertakes to say Mass for the giver of the stipend. In the early Church the faithful used to bring bread and wine to the priests, who selected from what was offered enough for the sacrifice, and reserved the rest for their support. This was found to be inconvenient, and in course of time the faithful who wished Mass to be offered for their intention contributed a sum of money for the support of the priest. This method, after all, is in substance what St. Paul alludes to: "Know you not that they who work in the holy place, eat the things that are of the holy place; and they that serve the altar, partake with the altar." [1] Simony may indeed be committed in transactions concerned with the Mass and stipends, but such sordid practices should not be presumed to be of ordinary occurrence.

Although a priest who accepts a stipend for a Mass does not sell the Mass, yet he enters into a strict contract with the giver of the stipend, and binds himself in justice to apply the Mass for his intention. He will, therefore, commit a grave sin against justice if he fail to fulfil his obligation, and he must restore the stipend which he received, but which he has no title to keep. Not only is the priest who has accepted a stipend bound in justice to say a Mass, but justice also requires that he should observe all the conditions of the contract into which he entered concerning the quality of the Mass, the place, and the time of celebration. If the time is not fixed by the terms of the

[1] 1 Cor. ix. 13.

contract, the decree of the Sacred Congregation of the Council, May 11, 1904, assigned one month from the time of receiving the stipend as the limit within which one Mass must be said, six months for one hundred Masses, and a longer or shorter period for a greater or less number. No priest may accept more stipends than he can satisfy within a year, except with the explicit or implicit consent of the donor. If he has not said the Masses stipulated for within the year, he is required to hand over the stipends to his ordinary. If founded Masses have not been said during the year within which they fell due, the stipend for them is also to be handed over to the ordinary. Priests may hand over stipends which they have not been able to satisfy within the time prescribed to their ordinary, to the Holy See, or to other conscientious priests on whom they can rely. In the latter case they have the duty of seeing that the obligation has been fulfilled; in the former they are released from all such burden. The Church wishes to prevent anything that has even the appearance of trading in stipends for Mass, and so it is prescribed that the whole stipend which was offered must be given to the priest who says the Mass, and nothing subtracted from it, nor may anything else be given in its place. It is specially forbidden to give stipends for Masses to booksellers, merchants, and managers of magazines, who sometimes collected them, and sent their wares instead of the money to priests who said the Masses. Buying books, or Church furniture, or anything else, by saying Masses is forbidden.

Any one who is guilty of violating these prohibitions, if a priest, incurs *ipso facto* suspension reserved to the Holy See; if an inferior cleric, he is suspended from the exercise of his orders and made incapable of ascending higher;

if a layman, he incurs excommunication reserved to the ordinary.

Only the bishop can accept founded Masses for secular churches, and generals or provincials for those of regulars. When the income from founded Masses is reduced in value from any cause, the Holy See alone is competent to reduce the number of Masses to be said according to the rules of equity.

The amount of the stipend for Masses, whether founded or manual, is different in different countries. It belongs to the ordinary to fix the amount, and when fixed by him it must be adhered to by both the secular and regular clergy. A priest who exacted more than the fixed amount for a Mass would commit a sin against justice, and be bound to make restitution of what he had charged in excess.

CHAPTER IV

THE TIME FOR SAYING MASS

1. By the common law of the Church Mass may only be said once in the day except on Christmas Day, when a priest may say three Masses. Mass may be said on every day in the year, but on the three last days in Holy Week Low Mass is forbidden. On those days in cathedral, collegiate, and parish churches, High Mass should be sung as far as possible. In parish churches where High Mass can not be sung, but three or four clerics can be got to serve, the ceremonies should be carried out according to the memorial of rites drawn up by command of Benedict XIII. In parish churches where not even this can be done, the bishop may give leave for a Low Mass on Holy Thursday, and he may also, for the convenience of the sick, allow a Low Mass to be said in other churches before the High Mass.

2. Mass may be said twice by a priest on the same day if the necessity of the people requires it. The bishop is the judge as to when it is necessary, as it will be if the people can not all get to one Mass on account of the distance at which they live from the church, or because the church is too small to contain them all at once. Moreover, in missionary countries it is quite common for priests to have a special faculty of celebrating twice in the day on

Sundays and holydays of obligation. The only cause recognized for the lawful use of this faculty is the necessity of the people, of which again the bishop is the judge, and it is expressly forbidden to take a stipend for the second Mass. The use of the faculty is not lawful when another priest can be got to say the Mass required by the necessity of the people.

3. According to the present discipline of the Church, Mass may be said at any time between daybreak and midday. The law will be kept if Mass is not finished before daybreak or begun after midday. The necessity of the people or of the priest is a sufficient reason for celebrating somewhat earlier and later than the ordinary times, and regulars have privileges by which they may for just cause begin Mass much earlier and much later than the legal time.

NOTE. — In the United States the bishops have from the Holy See a faculty, which they can communicate to all the priests in their respective dioceses laboring in the sacred ministry, by which they can celebrate Mass one hour before daybreak and one hour after midday, "*per unam horam ante auroram et aliam post meridiem.*" This privilege is understood to mean that a priest may begin Mass one hour before the time at which he could begin according to the general law of the Church, and similarly that he may begin one hour later than would be permitted by the general law. Clement XI issued a prohibition regarding the time for the celebration of Mass: "*Mandamus ne Missarum sacrificia ante auroram celebrentur et usque ad meridiem solum protrahantur.*" Afterward, in 1724, Benedict XIII permitted that Mass be celebrated

one-third part of an hour (twenty minutes) before the aurora, and one-third part of an hour after midday. This signified, as Benedict XIII himself declared, that Mass could begin not earlier than twenty minutes before the aurora, and should be finished not later than twenty minutes after midday. A privilege was granted to the Benedictine Order of celebrating in their own churches for a just reason two hours after midnight, which privilege is extended to all regulars. Pius VI granted to the Congregation of the Purity a faculty that the priests of the Congregation could *in perpetuum* celebrate two hours before the aurora and two hours after midday. Without any privilege a bishop may permit in a particular case for just cause that Mass be celebrated an hour before daybreak or an hour after midday, and even annually for a special solemnity; but he could not give permission for all the priests of his diocese to anticipate the celebration or defer it beyond the time fixed by common law. Superiors of Religious Orders having solemn vows may also dispense their subjects in particular cases, so that, for example, a priest not reaching the end of his journey before two or three o'clock P.M. might be permitted to say Mass, provided, of course, that he had kept his fast. The dawn of daybreak, it may be remarked, is considered as beginning when the sun enters the eighteenth degree below the horizon. The hour at which it begins varies according to the latitude of the place, and in places of the same latitude it is different at different times of the year. There are places in the United States where in summer the aurora begins at midnight, so that there a priest might commence his Mass immediately after without any privilege. — END OF NOTE.

His Holiness Pius X by a decree of the Holy Office dated August 1, 1907, graciously permitted in future three Masses or only one to be said according to the rubrics on the night of the Nativity in all convents of nuns who have enclosure, and in other Religious institutions, pious houses, and clerical seminaries, in which the Blessed Sacrament is habitually reserved. Holy communion may be administered to all who ask for it at these Masses and any one who hears one or more of them satisfies the precept of hearing Mass on that day.[1]

[1] Acta Sanctæ Sedis, xl, p. 478.

CHAPTER V

WHERE MASS MAY BE SAID

1. By ecclesiastical law Mass may regularly be said only in churches and oratories dedicated solely to the service of God, and therein on duly consecrated altars.[1] If, however, there be no church in the place, or if it be in ruins, or if it be too small to hold the number of worshipers, Mass may be said in a tent or in the open air on a portable altar with the leave of the bishop, if time permits of this being asked.

A bishop can erect public oratories in which Mass may be said in Religious institutions, in monasteries and convents, in seminaries, hospitals, prisons, and in the bishop's own residence. Bishops also enjoy a personal privilege of saying Mass on a portable altar even in private houses where they happen to be staying.

The Council of Trent[2] forbade bishops to allow priests to say Mass in private houses, and in consequence of this law and of repeated answers of the Roman Congregations, it is now settled that bishops have no power to grant leave for purely domestic oratories in private houses.

Note. — Although the faculty of granting the privilege of a private oratory is reserved to the Holy See, the bishops of the United States retain the faculty of celebrating Mass "*sub dio et sub terra, in loco tamen decenti,*" and of

[1] Trent. sess. xxii, Decree on things to be observed in Mass. [2] l. c.

communicating it to priests engaged in the ministry within their dioceses. (See Form I, Arts. 23, 28.) It is to be noted, however, that the S. C. of Propaganda declared that the condition, "*si aliter celebrari non possit,*" occurring in Article 23, is to be applied to the faculty of saying Mass *sub dio et sub terra,* and, besides, that under that faculty a bishop could not permit each priest to say Mass in a private house. "*Præterea non ea est earundem facultatum extensio, qua Amplitudo Tua quibusvis sacerdotibus etiamsi ægrotis valeat permittere ut in privatis ædibus super altari portatili Sacrum faciant.*" What may be done practically in the United States, as regards the place of celebration, can be gathered from the Second Plenary Council of Baltimore (n. 362): "*Statuimus sacerdoti nulli, vi facultatum generalium sibi concessarum celebrandi in quocumque loco decenti, licere Missam celebrare in ædibus privatis, nisi in stationibus, et in ædibus quas Ordinarius designaverit: aut dum actu missionis exercitiis, procul ab aliqua ecclesia, dat operam. Quod si Ordinarii alias concedant licentiam celebrandi in privatis ædibus ob speciales circumstantias, iis commendamus pro una tantum vel altera vice concedere.*" Hence a priest by the general faculty of celebrating in any becoming place can not say Mass in private houses except in the circumstances here stated. On the other hand, a bishop in this country may still give leave under special circumstances to say Mass in a private house, but he is recommended not to grant such leave for a notable time, "*pro una tantum vel altera vice.*" — END OF NOTE.

The power to do this is now reserved to the Holy See.

If there is an oratory duly erected on board ship, Mass

may be said there when circumstances permit. The Holy See also grants leave for Mass to be said on board ship on a portable altar even when there is no permanently erected oratory on board. A priest who has obtained and desires to use this privilege is bound to observe the conditions under which it is granted. Those conditions are that the ship is safe and at a distance from shore, that the sea is tranquil, and that another priest or a deacon is at hand to hold the chalice in case of danger when the ship rolls. Mass should not be said in the passengers' berths unless everything has been arranged so as to show due reverence to the Blessed Sacrament.

2. If a church or public oratory has been polluted by the perpetration therein of certain crimes, it is forbidden to say Mass there until it has been reconciled. The crimes which pollute a church are homicide, the shedding of human blood, consummated sin against chastity, and burial in the church of a non-baptized person, or of one who is to be avoided as excommunicate. In order that these crimes may pollute a church they must be mortally sinful, committed in the church itself, not merely in its neighborhood, and they must be publicly known.

NOTE. — The general law regarding the reconciliation of churches, which after being consecrated or only blessed become polluted, is thus expressed by Wernz (Jus Decretalium, vol. 3, n. 444). "*Reconciliatio ecclesiæ consecratæ ab Episcopo loci aut de ejus vel Prelati nullius vel Vicarii Capitularis vel Vicarii Generalis ex mandato speciali licentia ab alio Episcopo servatis ritibus præscriptis licite et valide est facienda: at valida est, si fiat ab Episcopo non habente jurisdictionem in loco.* (Cf. S. R. C. August 19, 1634, ad 3.)

Simplici vero sacerdoti etiam aqua lustrali per episcopum benedicta ab Ordinario loci concedi nequit, sed privilegium vel indultum apostolicum requiritur. Quodsi ecclesia polluta fuerit tantummodo benedicta, reconciliatio fieri potest a quolibet sacerdote, quem Ordinarius loci, i.e., *Episcopus vel Prælatus nullius vel Vicarius Capitularis vel Vicarius Generalis ex mandato speciali delegavit.*" According to the opinion here set forth, when a consecrated church has been polluted, it can not be licitly reconciled except by the bishop of the place or by another bishop specially appointed by the bishop of the place or by his vicar-general or vicar-capitular or by a *prælatus nullius;* however, it is a valid reconciliation when the prescribed rite has been performed by any bishop, though he have no jurisdiction in the place. Apart from a privilege or apostolic indult a bishop can not delegate a priest to reconcile a church which was consecrated and is polluted, this authority being reserved to the Sovereign Pontiff. If the church was blessed, not consecrated, a priest should be specially delegated by the ordinary of the place to reconcile it. The reader will find this whole question treated at length by Gasparri. (*De SSma Eucharistia*, vol. 1, n. 256, etc.)

In the United States the bishops have the following faculty (Art. 13, Form I.): "*Delegandi simplicibus sacerdotibus potestatem benedicendi paramenta et alia utensilia ad sacrificium Missæ necessaria, ubi non intervenit sacra unctio; et reconciliandi ecclesias pollutas aqua ab Episcopo benedicta, et in casu necessitatis, etiam aqua non benedicta ab Episcopo.*" Hence a bishop in this country can authorize a priest to reconcile polluted churches, whether consecrated or only blessed. Water blessed by the bishop should be used when the church has been consecrated,

unless in the case of necessity, when the priest himself can bless water for the purpose. In the rite of reconciling a consecrated church the priest should follow the Roman Pontifical. When there is question of reconciling a church which has been only blessed, the priest uses ordinary holy water blessed by himself or by any priest, and follows the rite prescribed by the Roman Ritual. (See Putzer, n. 135; Gasparri, n. 257.) — END OF NOTE.

A consecrated church which has been polluted should be reconciled by a bishop according to the form prescribed in the Pontifical; but if the bishop is engaged, he may authorize a priest to do it in his place with water blessed by the bishop. If the bishop live at a distance, regulars have a privilege of reconciling their churches with water blessed by themselves. If the church was blessed and not consecrated, it may be reconciled by a priest according to the form given in the Ritual.

Private oratories are not polluted, even if any of the above crimes be committed in them, and so they do not need reconciliation.

Mass may not be said in a church or oratory which has lost its consecration. This happens when the greater part of it is destroyed at one and the same time, or when a new portion is added to it and what is added is greater than the old part. A church does not lose its consecration if the roof falls in or if the plastering of the walls is renewed. When a church loses its consecration it must be reconsecrated, or at least blessed, before Mass be again said in it.

When a church is polluted the altars in it are also polluted, but altars do not lose their consecration merely

because the churches in which they are placed are desecrated. A fixed altar loses its consecration if the altar-stone is loosed from its foundation, and both fixed and portable altars lose their consecration if the tomb where the relics are placed is violated, or in consequence of a large fracture.

3. The sacred vessels and vestments lose their consecration when they are broken or torn so as to lose their shape. A chalice also loses its consecration when it is regilded. When the sacred vessels or vestments have lost their consecration, they must be mended and be reconsecrated before use.

CHAPTER VI

REQUISITES FOR SAYING MASS

BESIDES what we have seen in the last chapter, the Missal prescribes various other requisites for the due celebration of Mass. The following especially call for mention here: three altar-cloths, two wax candles, the ordinary priestly vestments, a server, a chalice and paten, clean corporal and purificator of linen, and a Missal. The altar linen and the vestments should be blessed by a bishop or by a priest with specially delegated faculties for the purpose.

NOTE. — Under Article 13, Form I, the bishops of the United States have power, "*Delegandi simplicibus sacerdotibus potestatem benedicendi paramenta et alia utensilia ad sacrificium Missæ necessaria, ubi non intervenit sacra unctio.*" Hence a priest to whom this power is communicated can bless the sacerdotal vestments, chasuble, stole, etc.; also corporals, palls, altar-cloths, ciborium, pyxis, and lunula, since holy oil is not used in blessing them. But they can not under this article consecrate chalices, patenas, altar-stones, or bells, for each of which the use of holy oil is required. However, by Article 7, Form C, a bishop in this country can depute a priest to consecrate chalices, patenas, and altar-stones, in which case the priest deputed must use holy oil consecrated by the bishop and follow the rite prescribed in the Roman

Pontifical. The bishop may also, according to Article 12 of the same Form C, delegate a priest to bless bells when he can not himself without grave inconvenience perform the function, provided that the rite of the Roman Pontifical be followed, along with the use of oil and water blessed by the bishop, or, when a grave cause exists, without water blessed by the bishop. In blessing vestments and other requisites for Mass which do not admit of the use of holy oil, the priest having the faculty of blessing such articles should follow the rite prescribed in the Roman Ritual, and not that of the Pontifical, according to a decree of the S. C. R. (March 16, 1876). A difference is therefore to be observed between those objects in whose blessing or consecration the use of holy oil is prescribed and those in which holy oil is not used; the Roman Pontifical is to be followed in the former, while in the latter the Roman Ritual should be observed. — END OF NOTE.

The chalice and paten should be of silver, and gilded at least on the inside. They should also be consecrated by a bishop. The difficulty of procuring wholly wax candles was reported to the S. R. C., which answered, December 14, 1904, that bishops should as far as possible see that the two candles for Mass should at least have a greater proportion of beeswax than of other material, and that private priests need not anxiously inquire about the quality of the wax.

Of the vestments, at least the alb, chasuble, stole, and maniple are required under grave precept; the amice and the girdle, as also a pall, purificator, and crucifix, are required under a less serious obligation.

The server should be a Catholic and of the male sex, but if one can not be procured, a woman may make responses from outside the altar rails.

NOTE. — By the common law of the Church it is prohibited *sub gravi* to say Mass without a server; it is held, however, that a grave cause or necessity excuses from this prohibition, *e.g.*, that the faithful may not be without Mass on a day of obligation, or, according to many, that the priest himself may fulfil the obligation of hearing Mass. In the United States the bishops are empowered by the Holy See under Article 23, Form I, to celebrate Mass *sine ministro*, and may communicate the faculty to priests laboring in their respective dioceses. There is, however, a condition attached to the exercise of this faculty on the part of a bishop or priest, *viz.*, "*Si aliter celebrari non possit.*" This impossibility should be interpreted so that the faculty herein conferred would mean something more than what, according to theologians, would be permissible without such faculty; otherwise the faculty would be useless. Hence it would appear that a priest having this faculty might, even on days which are not of obligation, say Mass without a server, when he can not procure one. For example, if a priest having to leave very early on a journey wishes to say Mass out of devotion before leaving, he would seem to keep within the limits of this faculty by celebrating *sine ministro*. It may be useful to note that, when this faculty is made use of, the priest himself should make the responses prescribed to be made by the server; but he should omit the second recital of the Confiteor (S. C. R. September 4, 1875), and in the prayer *Misereatur vestri*, etc., substitute *nostri* for

vestri, as also in the response, *Suscipiat*, etc., instead of *manibus tuis*, he should say *manibus meis*. See rubrics of the Missal, *Ritus servandus in celebratione Missæ*, VII, 7.

It is not at all clear that, when a priest having the foregoing faculty would say Mass without a Catholic server of the male sex, he should procure or lawfully could procure a female to give the responses outside the communion railing. It would seem better not to permit her to make the responses, since, if she did make them it might excite the *admiratio populi*. In convents, however, where Mass is often celebrated without a male server, there is a widely extended practice of having a Sister outside the sanctuary make the responses. So long as the Holy See does not pronounce against this practice, it may be held that it is not unlawful even in the United States, where priests, "*si aliter celebrari non possit*," may say Mass without a server to permit a Sister outside the sanctuary to give the responses. — END OF NOTE.

It is a disputed point among theologians whether the proper color of the sacred vestments is of strict precept; and they deny that there is a strict precept with regard to the use of a veil for the chalice, a burse, and a stand for the Missal.

CHAPTER VII

THE RUBRICS OF THE MISSAL

1. In the rubrics of the Missal the Church has laid down a series of minute rules for the celebration of Mass. Their number and minuteness show her solicitude concerning the proper performance of this divine sacrifice. Those which have reference to the Mass itself are in general preceptive, and bind under pain of sin. Grave sin, then, is committed by violating the rubrics of the Mass in serious matters; venial sin is committed by their violation in smaller matters. If a notable or important portion of the rite is omitted, or if notable additions are made to it by private authority, or any considerable change be made in it, there is a serious violation of the law. The rubrics which ordain that certain portions of the Mass be said in a loud or low or middle tone of voice only bind under venial sin, and so, if their observance would cause annoyance to other priests who are saying Mass, they cease to bind. Similarly, if through infirmity a priest is unable to observe some smaller rubrics, it is not the mind of the Church that he should be obliged to abstain from celebrating the holy mysteries.

It is a probable opinion that those rubrics in the Missal which have reference to what should be done out of Mass are only directive, not strictly preceptive so as to bind under pain of sin.

2. The general rule is that the Mass must agree with the Office which the calendar prescribes to be said. However, by the decree S. R. C., December 9, 1895, when Mass is said in a church or public oratory which is not one's own, which uses a different calendar, and celebrates a feast of double or higher rite, the Mass must always agree with the calendar of the church or public oratory, and not with the Office of the celebrant.

3. When Mass has been once begun it may not be broken off without grave reason, even before the consecration. After the consecration a still graver cause is required, as, for example, the sudden breaking out of fire in the church, when the sacred species might be at once consumed and the Mass brought to an end. Moreover, even temporary interruptions of Mass are forbidden except after the Gospel, according to custom. The prohibition is stricter according to the greater solemnity of the part of the Mass where there is question of interruption. However, for good cause, an interruption may be permitted before the offertory; to justify an interruption between the offertory and the consecration a graver cause is required, and a very grave cause after the consecration.

BOOK V

THE SACRAMENT OF PENANCE

CHAPTER I

THE NATURE OF PENANCE

1. PENANCE is both a virtue and a sacrament of the New Law. For as the Council of Trent teaches: "Penitence was indeed at all times necessary in order to attain to grace and justice for all men who had defiled themselves by any mortal sin, even for those who begged to be washed by the sacrament of Baptism; that so their perverseness renounced and amended, they might with a hatred of sin and a godly sorrow of mind detest so great an offence of God. Wherefore the prophet says, 'Be converted and do penance for all your iniquities, and iniquity shall not be your ruin.' The Lord also said, 'Except you do penance, you shall also likewise perish'; and Peter, the prince of the apostles, recommending penitence to sinners who were about to be initiated by Baptism, said, 'Do penance and be baptized every one of you.'" [1] God, therefore, has always required repentance or penance on the part of the sinner as a necessary condition for forgiveness. The virtue of penance may be defined as a habit inclining the sinner to hatred and detestation of his sin. He may be moved to this hatred and detestation by various motives, as, for example, by the thought of the

[1] Sess. xiv, c. 1.

goodness of God, who deserves better treatment than to be offended by the sinner, by the feeling of gratitude toward God for His benefits and mercies, by the sentiment of justice which induces the sinner to make reparation for the wrong which by sin he has inflicted on the majesty of God. Penance may thus be a general virtue with various motives, but theologians agree that it is also a special virtue with a particular motive of its own. More commonly they assign as this motive the hatred of sin as being an offence against God, something at which God is rightly and justly angered and displeased, and for which satisfaction must be made to God before peace and harmony can be again established between Him and the sinner.

Our Lord Jesus Christ instituted the sacrament of Penance, by which the sins committed after Baptism might be forgiven on the sinner's repentance. As the Council of Trent teaches: "Nevertheless, neither before the coming of Christ was penitence a sacrament, nor is it such since His coming for any one previously to Baptism. But the Lord then principally instituted the sacrament of Penance when being raised from the dead He breathed upon His disciples, saying, 'Receive ye the Holy Ghost: whose sins you shall forgive they are forgiven, and whose sins you shall retain they are retained.' By which action so signal, and words so clear, the consent of all the Fathers has ever understood that the power of forgiving and retaining sins was communicated to the apostles and their lawful successors for the reconciling of the faithful who have fallen after Baptism." [1]

Penance may be defined as a sacrament of the New Law

[1] Sess. xiv, c. 1.

instituted by Christ after the manner of a judicial process for the remission of sins committed after Baptism by a priest's absolution given to the contrite sinner who has confessed his sin to him.

This sacrament is instituted after the manner of a judicial process, as may be gathered from the very words of institution: "Whose sins you shall forgive they are forgiven, and whose sins you shall retain they are retained," said our blessed Lord; not of course that the apostles were empowered to forgive or not to forgive sins according to their own pleasure. They were bound to exercise the power entrusted to them according to the intention of Him who had given it, so that as faithful dispensers of the mysteries of God they were to forgive the sins of those who were worthy of forgiveness, and to dismiss without forgiveness those who were unworthy. But how could they know who was worthy and who was unworthy, and what sins they could forgive and what they could not? Evidently only by the sinner acknowledging his sins and showing that he repented of them, or on the contrary by his showing the want of the necessary dispositions. And so we gather from the words of institution of this sacrament what the tradition of the Church teaches, that for the forgiveness of sin in the sacrament of Penance the sinner must in sorrow confess his sin, and then it will be forgiven by the absolution of the priest. In this we have the substance of a judicial process, inasmuch as the sinner is the criminal who is witness against himself, and the priest is the judge who according to the merits of the case absolves the sinner and remits the sin in the name of God, or by not absolving the unworthy sinner retains his sin and condemns him to go unpardoned.

2. The effects of a fruitful reception of this sacrament

are the forgiveness of all mortal sins and of all venial sins which are confessed with due sorrow, the consequent remission of the eternal punishment due to mortal sin, and a partial remission according to the dispositions of the penitent of the temporal punishment which his sins have deserved.

Sins which are confessed to a priest who has the requisite jurisdiction to absolve them are forgiven directly by virtue of the power of the keys. On the other hand, if without fault on the part of the penitent some sin is not confessed and the penitent has the requisite sorrow, the sin will be forgiven indirectly, inasmuch as the absolution will take its effect and infuse sanctifying grace into the soul, and this sanctifying grace expels all grievous sin from the soul. The absolution will also be indirect when the priest has not faculties for some sin or sins confessed, but for some special reason he is justified in giving the penitent absolution.

3. The Council of Trent[1] teaches that "This sacrament of Penance is for those who have fallen after Baptism necessary unto salvation, as Baptism itself is for those who have not as yet been regenerated." This sacrament, then, like Baptism, is a necessary means for salvation for all who have committed grave sin after Baptism. There is, consequently, for all such a divine precept which obliges them to go to confession. They must fulfil this precept at any rate before death, and the Church, using the power given her by her divine Founder, has obliged all who are conscious of being in mortal sin to go to confession at least once a year. If there is no opportunity of going to confession, one who has fallen into grievous sin can through the mercy of God obtain pardon for it by making an act of perfect contrition or of pure love of God. These acts implicitly

[1] Sess. xiv, c. 2.

contain a desire to receive the sacrament of Penance and to fulfil all other obligations imposed by God and by lawful authority. Even after sin has been forgiven by an act of perfect contrition or of pure love of God, there will always remain the obligation of confessing it, if it be mortal, when the time for the annual confession arrives or the opportunity occurs. Those who do not fall into grievous sin are under no obligation of going to confession, though, of course, they are the last to neglect the use of so powerful a means as frequent confession to attain purity of soul and to obtain great graces from God.

CHAPTER II

THE MATTER OF PENANCE

1. THE remote matter of the sacrament of Penance is the sins which have been committed after Baptism, for sins committed before Baptism, when this is received in adult age, are forgiven by Baptism. The matter of Penance is necessary, or free but sufficient. Mortal sins which have never been directly absolved are the necessary matter of confession, for as the Council of Trent teaches [1] every mortal sin committed after Baptism must be submitted to the keys. The same council teaches that venial sins may be confessed, but that there is no necessity to do so, and so they are sufficient but free or optional matter of the sacrament. The same is true also of mortal sins which have been already absolved directly, for the penitent may with fruit renew his sorrow for them, and nothing prevents the sentence of absolution being repeatedly pronounced over them. The previous sentence of absolution is, as it were, confirmed anew, and thereby fresh grace is infused into the soul.

2. A doubt may sometimes arise as to whether a person has ever been baptized, or as to whether his Baptism was valid, and after Baptism has been conditionally administered in such a case so as to make so important a matter secure

[1] Sess. xiv, c. 5.

the question remains whether this person must make a general confession of past sins or not. If a Catholic has been in the habit of going to confession and making good ones as far as he knows, there will be no necessity to repeat those confessions after conditional Baptism. For if he was baptized before, his confessions would be valid, and if he was not baptized, his past sins are not matter for confession.

A non-Catholic, however, who receives conditional Baptism is in a different position. His past sins have not been confessed; if he was baptized before, he is bound to confess them; if he was not baptized before, they are not matter for the sacrament of Penance. What is he bound to do when the fact of Baptism is uncertain, and at most it can be said that there are probabilities on either side?

The first Synod of Westminster[1] prescribes that a non-Catholic already probably baptized who is received into the Catholic Church must, after conditional Baptism, make a full confession of the sins of his past life. This decree was confirmed by the Holy Office December 17, 1868, and several other decrees and instructions in the same sense have been issued. In practice, then, and in countries which are bound by these decrees and instructions, as are England and the United States, the question is settled by positive law. With regard to other countries which are not directly subject to the foregoing decrees and instructions it is still a matter of controversy among divines whether a full confession is obligatory. In the opinion of several, there is no universal law, divine or human, which makes confession obligatory in such a case.

3. The proximate matter of Penance, according to the more common opinion, are the acts of the penitent: con-

[1] d. xvi, n. 8.

trition, confession, and satisfaction. According to the Thomist doctrine, the acts of the penitent constitute the material part of the sacrament, so that they are the matter out of which the sacrament is made, and are an essential part of the sacramental sign. If the Council of Trent calls them the quasi-matter,[1] it is not because they are not the true matter in the sense just explained, but because they are not the matter which is used externally in the confection of the sacrament, as is water in Baptism, or chrism in Confirmation.

On the other hand, the Scotists allow, indeed, that contrition, confession, and satisfaction on the part of the penitent, are necessary conditions for the administration of Penance, but they hold that the whole sacramental sign is contained in the words of absolution. These words alone are used by the minister of the sacrament, and they signify the grace conferred by the sacrament. Taken materially, they constitute its matter; inasmuch as they signify the giving of grace for the remission of sins, they constitute its form. This opinion has never been condemned by the Church, and it remains probable, but the question belongs rather to dogmatic than to moral theology.

4. It is not sufficient to confess one's sins in general terms, and if they are grievous the law of God requires that they be confessed according to number and species, as the Council of Trent teaches.[2] As we have seen, venial sins are sufficient matter for absolution, but there is no necessity to confess them. But supposing that a penitent has only venial sins, and he wishes to confess them, what kind of confession is necessary and sufficient? Will it be enough to say, "I accuse myself of some small sins and ask

[1] Sess. xiv, c. 3. [2] Sess. xiv, c. 5.

for absolution"; or "I accuse myself of all the sins of my past life, and I have nothing serious"?

All divines agree that it will be sufficient to mention some one sin in particular in this case, or to mention the virtue or obligation which has been violated, as by saying, "I accuse myself of slight negligence in prayer," or "of small faults against charity." They differ about the lawfulness of using a mere general formula. Such a method of confessing is against the practice of the Church, which, as St. Thomas says, we should always follow; it is also liable to abuse, for penitents can not always decide what is serious and necessary matter for confession or not, and shame might easily lead them to be content with generalities when they should give particulars. However, there is something to be said for the other view, inasmuch as some sort of confession is all that is required for the essence of the sacrament, and when there are only venial sins to be confessed there is no certain law which prescribes confession according to number and species, or even more than in general terms. This opinion is at any rate sometimes of use, as it may at times enable confessors to be satisfied with generalities when they can not get more.

5. The solution of questions about the obligation of confessing doubtful sins largely depends on what system of moral theology is followed. The following principles are generally approved by probabilists:

a. When the penitent doubts whether he has been guilty of some sinful act or not, he is not bound to confess it, for he can not be said to be conscious of sin, and a certain obligation can not arise from an uncertain source.

b. When the doubt is as to whether full consent was given to what would have been a grave sin if that were the

case, the question should be settled by recourse to presumptions. If in other cases consent has usually been given, the presumption is against the penitent, and he should confess the sin as it is in his conscience; otherwise there will be no obligation to do so.

c. If the doubt is whether the sin were mortal or venial, there is no obligation to confess it, for the penitent is not conscious of mortal sin; and only such are bound to confess.

d. If the doubt is whether a mortal sin which was certainly committed has ever been confessed, we must distinguish; if there be no good ground for thinking that it has been confessed, the obligation will still remain; if, on the contrary, there be good ground for thinking that the sin has been confessed, there will be no obligation of confessing it again.

e. It is generally better for penitents, unless they are scrupulous, to confess doubtful sins, as it conduces to peace of conscience, and is a meritorious act of humility.

When a doubtful sin has once been confessed as such there will be no obligation to confess it again, even though subsequently the penitent becomes sure that he committed the sin. The sin was confessed as it was on the penitent's conscience, and it was absolved directly.

According to the common opinion, although there is no strict obligation to confess a mortal sin which is doubtful, or which has probably been confessed, yet one should not go to holy communion in such a state of doubt without either going to confession and confessing at least some sin, or making an act of contrition. For a man should prove himself before receiving holy communion, and have a well-grounded belief that he is in a state of grace.

If a penitent mentions only doubtful matter for absolution, the confessor should secure certain matter before giving absolution. Although a penitent may confess only optional matter, yet he has a right to absolution founded on the tacit contract which the confessor entered into with him when he admitted him to confession.

CHAPTER III

CONTRITION

CONTRITION is the first of the acts of the penitent which constitute the matter of the sacrament of Penance. It is defined by the Council of Trent to be a heartfelt sorrow and detestation of sin committed, with a purpose of not sinning again. In this section, we will treat of contrition apart from the purpose of amendment, and in the following section, of the purpose of amendment.

SECTION I

The Nature of Contrition

1. A heartfelt sorrow is not quite the same thing as a hatred or detestation of sin. Sorrow is a pain which we feel on account of the presence of some evil or the absence of some good; hatred is an aversion for some evil which is past. Hatred of sin, consequent aversion for it, and a turning away from it is the chief element in contrition; for if we have this hatred we shall have sorrow for sin regarded as a present evil, we shall turn away from it as a past evil, and we shall propose to flee from it in the future. If, then, we have this hatred of sin, we shall have sorrow and a purpose of amendment; we shall have true contrition.

That sorrow for sin which arises from the perfect love of

God is called contrition in the full and strict sense; sorrow for sin arising from less perfect motives, as from the fear of hell or the moral turpitude of vice, is called attrition. Ordinarily the word contrition is used indifferently of both kinds of sorrow.

2. Contrition or penitence or repentance is, as we have already seen, according to the teaching of the Council of Trent, a necessary condition for the forgiveness of sin by God. God will not forgive sin unless the sinner turn from his sin and approach Him by sorrow of heart. Contrition, then, is a necessary means of salvation for all who have fallen into grievous sin. It is also matter of divine precept which must be fulfilled at least when the sinner is in danger of death, for then it becomes of supreme necessity, and also sometimes during life. The Church has determined this divine precept by commanding all who have come to the use of reason and have fallen into sin to go to confession at least once a year. Moreover, repentance for sin becomes necessary when any action has to be performed which for its due performance requires the agent to be in the state of grace. Furthermore, inasmuch as one who is deprived by sin of the grace of God can not long resist temptation and will fall again and again before long, the sinner is obliged to rise from his sin in order to avoid repeated falls. Of course it is better, and the sinner is to be urged, by all means, to rise at once when he has had the misfortune to fall into sin. He should never sleep while he is conscious of being out of the friendship of God. Still he is not bound under pain of committing a new sin to repent immediately after committing sin. It will be sufficient if he repent at least when repentance becomes necessary according to the doctrine which has just been laid down.

3. Not every sort of sorrow is sufficient to justify the sinner, even with the help of the sacrament of Penance. Although perfect love of God suffices to reconcile the sinner with God, though it leaves the obligation of confessing the sin it remits, still this love will not serve by itself as a preparation and disposition for the reception of Penance. A material part of the sacrament of Penance is contrition, and contrition is not love. The sinner, then, who wishes to receive the sacrament of Penance must have true and sincere sorrow for his sin; he must detest it and turn away from it in order to be reconciled with God, whom it offends. Mere natural sorrow for sin because of the temporal evils which it causes is not sufficient. I may well be sorry because sin has ruined my good name, or my health, or my fortunes, but such motives are merely natural, and have no relation to God. The sinner in the sacrament of Penance seeks reconciliation with God, and so the motives of his sorrow must have reference to God; they must be supernatural, founded on revelation and on faith. Without faith no act can be of avail for salvation, as "without faith it is impossible to please God." [1] The sinner must regard sin as the greatest of all evils, as in reality it is. He must be prepared to do and to suffer anything rather than commit sin again. Otherwise he can not be said to fulfil that greatest of all the commandments, which bids us love God with our whole heart, with our whole soul, with all our strength, and with all our mind. Inasmuch as any one mortal sin deprives us of the friendship of God, the sorrow of the sinner must also be universal and embrace all the sins by which he has grievously offended Almighty God. For this it is not necessary that there should be a separate

[1] Heb. xi. 6.

and distinct act of sorrow for every sin committed; it will be sufficient if the motive be universal, so as to embrace all sins. Thus, inasmuch as all mortal sins are directly opposed to charity, and any such sin deserves the punishment of hell, if our sorrow is motived by love toward God, or by fear of hell, it will be universal in the sense required.

Provided that there be sorrow for all mortal sins confessed, a want of sorrow for venial sins will not invalidate the sacrament. For venial sins are compatible with the state of grace and the friendship of God. Still there must be some sorrow for sin confessed; otherwise an essential part of the sacrament of Penance will be wanting. And so if the penitent have only venial sins to confess, for none of which he is sorry, the sacrament would be invalid and sacrilegious. He must at least be sorry for one sin confessed, and he should not confess venial sins for which he is not sorry unless he has some good reason, as if he wishes to ask the advice of his confessor about them, or to make the state of his soul more fully known to him.

4. As contrition according to the common view forms a part of the sacramental sign in Penance, it should in some manner be expressed outwardly, not indeed that any form of words is necessary, but the sorrow of the penitent should appear from his confession, from his demeanor, or from his words or other signs. It must exist, if not before, at least when absolution is given, for sin cannot be forgiven if there be no sorrow for it. Moreover, as the different parts of the sacrament go to make one moral whole, the penitent's act of sorrow should in some way be referred to the sacrament. For this, however, it will be sufficient if together with the act of sorrow there be the intention to confess the sin. In case, then, a penitent has inadvertently

omitted a serious sin from his confession, but remembers it immediately after he has received absolution and mentions it to the confessor, the latter may absolve him at once, nor is it necessary for the penitent to make a fresh act of sorrow for that particular sin.

On account of the necessity of a moral union between the several parts of the sacrament, there must not be too long an interval between the act of sorrow for sin and the reception of absolution for it. Ordinarily, of course, the sorrow is virtually renewed and expressed when the sin is confessed, but if this were not the case, and the act of sorrow preceded the confession by more than one or two days, it would be doubtful whether there was the necessary union between the parts of the sacrament so as to constitute one sacramental sign.

5. There have been heated controversies in the past as to the sufficiency of attrition to remit sin with the sacrament of Penance. Although they are not quite settled even yet, nevertheless since the Council of Trent the common doctrine is fairly clear and certain. The Council then seems to teach [1] that sorrow for sin because of the fear of hell, or its moral turpitude, or on account of the punishment with which God afflicts the sinner even in this life, will be sufficient for the remission of sin in the sacrament of Penance, provided that it destroys all affection for sin in the heart of the penitent, and converts him from sin to God. The slavish fear of hell, by which a man refrains from sinful acts while preserving his affection for them, is, of course, insufficient even with the help of the sacrament to forgive sin and reconcile the sinner with God. The fear which is salutary and efficacious must be the filial fear by which the

[1] Sess. xiv, c. 4.

sinner turns to God because he neither wants sin nor its evil consequences any more. Such sorrow has all the elements which, as we saw above, are required in contrition.

6. There is a controversy among theologians as to whether the sacrament of Penance can ever be valid without producing its effects in the soul at the time of its reception on account of some obstacle which is there. We saw above that this may be the case with Baptism and other sacraments. There is a special difficulty with regard to Penance, because the dispositions, whose absence is only an obstacle to grace given by other sacraments, enter into the substance of Penance, and so their absence would seem to destroy the sacrament itself. In spite of this, however, it is a probable opinion that at any rate in two cases the sacrament of Penance may be valid but *unformed*, as theologians say. The first case is when a penitent has forgotten some mortal sin for which he has never elicited an act of sorrow, but confesses other sins for which he is sorry for motives which are special to them and not universal. The second is when through inculpable ignorance the penitent thinks that it is not necessary to be sorry for all mortal sins confessed, provided there be the requisite sorrow for some. In these cases there will be all the elements necessary for the validity of the sacrament, which, however, can not infuse grace into the soul on account of the presence there of grievous sin still unrepented of.

7. When Penance is received in danger of death with attrition and not contrition, some theologians insist on the necessity of the dying person making an act of perfect love of God, either to make sure before death of the validity of the sacrament of Penance, or to satisfy the divine precept, which according to them requires all who are in

danger of death to make an act of charity. However, when the dying person has made a good confession and been absolved even with attrition, he is certainly in the state of grace, nor is there any valid argument which proves that such a person is obliged to make an act of charity. Neither the dying nor those who assist them are as a rule conscious of any such obligation.

Because the Council of Trent, while describing the process of the sinner's justification, mentions acts of faith, hope, and the beginnings of love toward God, some theologians concluded that explicit acts of those virtues are required for Penance in addition to contrition. Those acts, however, are implicitly contained in the other acts of the penitent, and the fact that the Council explicitly mentions them does not prove that it teaches that they must be explicitly elicited by the penitent sinner in order to receive absolution for his sins.

Section II

The Purpose of Amendment

1. We saw in the preceding section that contrition is essentially a turning away with hatred from sin in order to approach to God, and so all true contrition necessarily implies a purpose not to sin again. If the truly contrite sinner thinks of the future, he can scarcely fail to form an explicit purpose of amendment, and some theologians hold that this explicit purpose is necessary, otherwise why should it find a place in the definition of contrition given by the Council of Trent? On account of its importance, it is well that the purpose of amendment should always be explicit, but still as it is virtually contained in all true sorrow for sin, and the fact that the Council explicitly mentions it does not prove that it must necessarily be explicit, the opinion which denies the absolute necessity of an explicit purpose of amendment for the validity of Penance is safe. A Roman council held in 1725 under Benedict XIII issued an instruction explaining how to make one's confession, and it only insists on an implicit purpose of amendment.

2. Whether it be explicit or implicit, the purpose of amendment must be sincere, efficacious, and universal.

It must be sincere, with a genuine intention to avoid sin in the future; it will not suffice to make profession of good intentions with the lips, without any real determination to carry them into effect.

It must be efficacious, or the sinner must be prepared to take the necessary means to avoid sin. A mere half wish

and half resolve will not do. The sinner must be prepared to do and suffer anything rather than fall into sin again. It would, indeed, be unwise to try one's own determination by imagining all kinds of terrible temptations to sin to see if the will would remain constant, but at any rate the will must here and now be so rooted in good that, come what may, it is determined not to be moved.

There must also be a firm resolve to avoid all mortal sins for the future, not merely any that may have been confessed, but all others, or else there can be no friendship with God, whom we must love above all things. He can not love God above all things who is prepared to offend Him mortally. The purpose of amendment need not extend to all venial sins, provided that at least there is the sincere intention of avoiding some sin that is confessed, or at any rate of lessening the number of smaller transgressions.

CHAPTER IV

CONFESSION

1. CONFESSION, or the self-accusation of a penitent made to a priest with a view of obtaining sacramental absolution, is the second material element of Penance. Such confession is necessary because it is an essential element of the sacrament of Penance, which, as we have seen, is a necessary means of salvation for all who have fallen into grave sin after Baptism. The Council of Trent teaches that "From the institution of the sacrament of Penance, as already explained, the universal Church has always understood that the entire confession of sins was also instituted by the Lord, and is of divine law necessary for all who have fallen after Baptism." [1]

2. This confession must be made by word of mouth according to the practice of the Church and the teaching of the Council of Florence.[2] However, oral confession is not absolutely necessary for the validity of the sacrament, for mutes or penitents who know no language known also to the confessor, or those who are dying and are unable to speak, may confess by signs. Moreover, for good reason, any one may write his confession, hand it to the priest to read, and accuse himself in general terms, such as "I confess all that is written there." Although mutes and other penitents may thus confess in writing, yet there is no

[1] Sess. xiv, c. 5. [2] Decreto pro Armenis.

obligation to do so, for sacramental confession should be secret and auricular, whereas writing makes it to some extent public, *litera scripta manet.*

Clement VIII, by a decree dated June 20, 1602, condemned the opinion that it is lawful to confess by letter to an absent priest or to receive absolution in the same way from an absent priest, and forbade the opinion ever to be put in practice; whence theologians conclude that such confession or absolution would be invalid by divine law, else the Pope could not have condemned it in such absolute terms. It seems to follow that confession by telephone would also be invalid, for confession would be made by one who is absent, not present with the priest at the time of receiving this sacrament, as is required by the conditions of its valid administration.

3. A full, entire, and specific confession of all the mortal sins which have been committed after Baptism is prescribed by divine law. According to the Council of Trent,[1] "If any one saith that in the sacrament of Penance it is not necessary by divine law for the remission of sins to confess all and singular the mortal sins which after due and diligent previous meditation are remembered, even those mortal sins which are secret, and those which are opposed to the two last commandments of the Decalogue, as also the circumstances which change the species of a sin . . . let him be anathema."

Theologians distinguish between the material and the formal integrity of confession. The material integrity consists in making known each and all the mortal sins which have been committed and which have not yet been confessed; the formal integrity consists in confessing all

[1] Sess. xiv, c. 7.

the mortal sins which occur to the mind after a diligent examination of conscience, or at least of all the sins which the penitent is bound under the circumstances to confess to the priest. It is formal integrity which is prescribed by divine law, and to procure it the penitent is bound before confession to make a diligent examination of his conscience. He should not be too anxious in making this examination; it will be sufficient if he employ that diligence which prudent men employ in worldly matters of importance. No general rule can be given to measure the length of time which the examination should occupy. Much depends upon the character of the individual, the length of time which has elapsed since the last confession, whether the penitent is accustomed to commit grave sins or not, and on similar circumstances. If the penitent can not recollect the number of times that he has fallen into serious sin, he should mention the number as nearly as he can, and if he has fallen very frequently and almost continuously over a long period of time, it will be sufficient to mention the approximate number of times that he has fallen in the day or week, together with the length of time during which the habit has lasted.

4. A number of special questions must here be considered which touch on the integrity which is required in confession.

The Council of Trent, as we have just seen, teaches that those circumstances which change the nature of a sin must be made known; the theft of a consecrated chalice, which is a sacrilege, would not be adequately confessed by simply saying, "I committed theft." Not only circumstances which change the specific nature of a sin must be confessed, but also those which make a venial sin mortal and *vice*

versa. The quantity in theft, then, must be indicated sufficiently to enable the priest to judge whether it was a mortal or a venial sin. Divines are not agreed whether circumstances which merely increase the malice of a sin but do not otherwise change its nature or moral quality are necessarily to be confessed. Many, with the Catechism of the Council of Trent, teach that there is an obligation to confess them, but as they give no convincing reason for their opinion and the contrary is held by many approved theologians, we may safely follow the more easy and the more lenient view.

It is not sufficient to confess as an internal sin one which was completed in external act. It would not be sufficient for a penitent to say that he desired to steal when he actually stole. For although the malice of sin is in the internal act of the will, and the external act adds nothing to it *per se,* yet, considered as human actions, an internal is different from an external act, and therefore as sins are bad human actions, an internal sin is specifically different from the same sin completed in external act.

It is a matter of controversy whether the mere effect of a sin must be confessed. If a man wounds another with the intention of killing him, and then repents and confesses unlawful wounding with the intention of killing, but afterward the man dies, will his assailant be obliged to go to confession again and confess homicide? The opinion is more probable that there is no such obligation, for such an effect of sin is not a sin, and we are only bound to confess sins; a sin is a human action, and when the victim dies his assailant does not act; he would now prevent the death if he could, and so he does not sin.

A vicious habit or custom of committing sin is a cause

of sin rather than sin itself, and as sins are the matter of confession, *per se* it is not necessary to confess a sinful habit. If, however, the penitent did not use sufficient diligence to correct his bad habit, and this caused him inadvertently to commit sin, to blaspheme, for instance, then although the blasphemy, because inadvertent, is not sinful in itself, it is nevertheless voluntary and sinful in its cause, and so the uncorrected bad habit must be confessed. It is sometimes of importance for the confessor to know whether his penitent has contracted a habit of sin in order to be able to direct him, and so the confessor has a right to ask in confession whether a habit has been contracted, and the penitent is then under an obligation to tell the truth.

If many sins have been committed with others it is usually immaterial whether they were committed with one and the same or with different persons. However, if a sin against chastity is committed with a married person, that circumstance must be mentioned, as it causes the sin to be against justice as well as against chastity. Similarly, if one or both accomplices in such a sin are bound by a vow of chastity, that must be mentioned. A Religious who is a priest, and even if he is solemnly professed, would satisfy his obligation of confessing a sin against chastity by mentioning it, and adding that he is under a vow of chastity. For it is probable that there is no specific difference between the violation of a solemn and a simple and even private vow of chastity, and a priest like a Religious is bound to chastity by vow.

Sins against chastity committed with relations have the special malice of incest, but with the exception of the first degree in the direct line of consanguinity, it is probable

that the several degrees of kindred or affinity do not constitute a specific difference in the sin. There is a special malice and difformity in a sin of impurity committed with parent or child, but among civilized peoples this is happily of rare occurrence. Hatred against relations is not only against general charity but is also contrary to piety, which binds relations to love each other with a special affection. Grave hatred will be a serious sin also against this virtue of piety if it is indulged in against near relations, not if it is against more remote kindred with regard to whom the obligation is not so strict.

Mere superiority or position of itself does not change the nature of a sin committed by rulers, magistrates, and people in authority. And so if a master sin with his servant, the sin does not of itself differ from ordinary fornication. If, however, the sin is also a violation of a special duty, then of course it will have a special malice, and so if a schoolmaster corrupt a youth committed to his care, he must mention this circumstance in confession.

The time at which a sin was committed does not change its nature, and so even though a sin which has been committed recently be confessed as though it were a sin of one's past life, the confession will be valid, but of course the practice is not to be commended, nor should it be indulged in.

5. Integrity of confession is prescribed by divine law, but as even divine law does not bind to what is impossible, physical or moral impossibility of making a full confession will excuse the penitent from obeying the law. And so danger of death when the dying person has not the strength or time for making a full confession, or ignorance of any language known to the priest, or danger of violation of the

seal of confession, or danger to life from pestilence or other cause, will excuse the penitent from making a full confession of all his sins. Innocent XI condemned the proposition that a large concourse of penitents on some great feast is a sufficient reason for absolving them without requiring a full confession. When a penitent has been absolved without making a full confession on account of the physical or moral impossibility of doing so, there always remains the obligation of supplying the defect in the next confession, unless the impossibility continues. A proposition asserting the contrary was condemned by Alexander VII. Moreover, that a penitent may lawfully ask for absolution without making a full confession, the following conditions must be verified:

a. There must be some sort of necessity for making the confession here and now, as for instance the obligation of receiving the sacraments at Easter, or the hardship of remaining long without the sacraments, or in a state of mortal sin.

b. There must be no other confessor at hand to whom a full confession could be made without grave inconvenience.

c. All sins must be confessed which can be mentioned without grave inconvenience, extrinsic to confession, which affects the penitent, the confessor, or some third person. The reason of this is because it can not be supposed that Christ our Lord intended to bind penitents to make a full confession when it would entail such a hardship, whereas we know that He did command a full confession in spite of shame or other difficulties which are the natural accompaniments of confession of sin to a fellowman.

6. By a general confession is meant a repetition of preceding confessions. Sometimes this is necessary, some-

times it is useful; otherwise it is harmful, likely to beget scruples, and lead the penitent to think about the past when he should be thinking about the present and the future, and so it should not be permitted.

A general confession is necessary when through want of jurisdiction on the part of the confessor, or of a full confession or of sorrow for sin on the part of the penitent, former confessions were certainly invalid. In these cases all the invalid confessions must be repeated at least as far as the necessary matter is concerned.

A general confession at certain times extending over a certain period is frequently prescribed to Religious by rule, which, of course, should be dutifully observed. Moreover, it is useful for most people to make a general confession sometimes, especially when about to enter upon a new state of life, or when while making a spiritual retreat and meditating upon sin the grace of God moves the soul to greater sorrow for the past than one ordinarily feels. Sometimes a general confession may be allowed to allay doubts and scruples of conscience with regard to past sins.

Unless some notable spiritual fruit is to be hoped for, a general confession should in other cases besides the above be regarded as harmful, and should not be allowed.

CHAPTER V

SATISFACTION

1. It is part of the law of eternal justice that when we sin by following our own will instead of the will of God we must be brought back again into the right way by suffering what we would not. And so, sin brings with it its penalty; when we have sinned we must suffer for it either in this world or the next. It is in keeping with this principle that by the institution of Christ one of the elements of the sacrament of Penance by which sin is forgiven is satisfaction. By satisfaction is understood some action which entails labor and pain, imposed by the priest in confession on the repentant sinner and accepted by him. We have already seen that the Council of Trent teaches that satisfaction is an element in the material part of Penance, and the same council in another place[1] adds: "Therefore the priests of the Lord ought, as far as the Spirit and prudence shall suggest, to enjoin salutary and suitable satisfactions according to the quality of the crimes and the ability of the penitent."

Confessors, then, are under the obligation of giving a penance to their penitents in satisfaction for the sins which they confess. As a general rule, they must give a grave penance for grave sins, otherwise they will sin grievously; but probably only a venial sin would be com-

[1] Sess. xiv, c. 8.

mitted by neglecting to give a suitable penance for light faults.

In the early Church the penances enjoined were very severe, but according to modern discipline that is considered a grave penance and suitable for a penitent who has confessed grave sins, which would bind under a grave obligation if it were imposed by ecclesiastical law. The Church encourages her children to make up by gaining indulgences for what the justice of God may require in addition to the comparatively light penances which are imposed nowadays.

The natural sequence of judicial acts in the tribunal of Penance requires that a penance should be enjoined by the priest before giving absolution, but it will be valid if imposed after absolution.

The Ritual expresses a wish that, as far as possible, penances should be given which are contrary to the sins confessed, as almsgiving for avarice, fasting or other bodily affliction for lust, humiliations for pride, acts of devotion for sloth. For such as but seldom confess more frequent reception of the sacraments may be enjoined. The confessor should never apply to personal objects alms imposed on his penitents, nor enjoin public penance for secret sins.

2. The penitent is bound to accept and to execute a reasonable penance which his confessor has imposed on him. This obligation will be grave when a grave penance has been imposed for serious sins, otherwise it will bind under pain of venial sin. As the penitent is bound to accept the penance, so he is obliged to execute it at the time prescribed, if any time was fixed, or if not, then at a reasonable time. To defer its execution so long as to be in danger of forgetting it would be equivalent to not ful-

filling it. It is best to execute the penance as soon as can conveniently be done.

If the penitent forgets the penance which was enjoined, he is excused from fulfilling any penance, as he is not bound to confess the same sins a second time, and he can not substitute some other of his own choice, as he is not the minister of the sacrament.

3. In order to be sure of obtaining the sacramental effect of fulfilling the penance enjoined by the confessor, the penitent must be in the state of grace when he fulfils it, for God does not remit temporal punishment due to past sins in favor of one who is at enmity with Him. However, by fulfilling the penance even in the state of mortal sin, what had been enjoined would have been executed, though it would not then effect its object of remitting temporal punishment due to sin confessed. It is a disputed point among theologians whether fulfilment of penance while in a state of sin would produce its effect when the sinner repented and again recovered the state of grace. Many theologians hold that it does so, and that it revives in the same way as a sacrament revives which has been validly received, but which does not produce grace at the time of its reception on account of the presence of some obstacle in the soul.

Although it is better and safer to execute the penance while in the state of grace, and if it is executed in a state of mortal sin it does not at any rate at once obtain its effect, yet it is not certain that any fault is committed by doing one's penance while in sin, any more than it is sinful to assist at Mass while out of the friendship of God. One who in sin hears Mass on Sunday satisfies the precept, though he does not obtain the full fruit of the sacrifice;

in the same way one, who while in sin says his penance, fulfils indeed his obligation, but does not thereby obtain at the time the sacramental fruit of his action.

4. Although a penitent may not of his own authority substitute another penance for that which was imposed by his confessor, yet he may for good reason get this commuted either by the same or by a different confessor. The same confessor may commute the penance which he himself imposed either in or out of confession, provided that so long an interval has not elapsed that the commutation can not be considered one moral act with the confession and the imposition of the penance which is commuted. If the penitent goes to another confessor and asks for a commutation of a penance which has been enjoined him, the commutation must be granted in confession, otherwise the new confessor will have no jurisdiction over the penitent. The former confession need not be repeated; it is probable that it will be sufficient if the new confessor knows the penance which was given and for which a commutation is asked, together with the difficulty which the penitent feels in executing it.

CHAPTER VI

THE FORM OF PENANCE

1. We must distinguish the form which is required for the validity of the sacrament from the form which is commonly used according to the Ritual. "I absolve thee from thy sins," is sufficient for the validity of the sacrament, and probably even the mere words, "I absolve thee." The Ritual form consists of the four short prayers beginning with *Misereatur*, etc., of which the third is the most important, as it contains the absolution from censures and from sin. The absolution from censures is always given before the absolution from sin for the sake of greater security, because if the penitent were under censure, he could not lawfully receive a sacrament. A rubric of the Ritual expressly lays down that the other three prayers may be omitted in shorter and more frequent confessions, but it is better always to add the last prayer, as it probably gives a special satisfactory efficacy to the good works which the penitent subsequently performs.

We saw above that absolution can not be given validly by a priest to a penitent who is not morally present at the time. This sacrament is a judicial process and the priest who is the judge pronounces sentence on the culprit who is present in court. The absolution must be pronounced by word of mouth, and the penitent must be within hearing distance, not farther distant than the ordinary tone of voice carries.

2. The priest can not pass sentence without having a sufficient knowledge of the sins to be absolved and the dispositions of the penitent. It is not necessary, however, nor is it possible to have a distinct knowledge of the subjective malice with which the sins of the penitent were committed. The confessor may presume that the subjective malice of the penitent corresponds with the objective malice of the sin, unless he has special reasons for concluding otherwise. With his habitual knowledge of the malice of different sins the confessor passes a sufficient judgment on them if he quietly listens to the self-accusation of the penitent.

A merely historical account of the sins which a person has committed may suffice for absolution if the penitent resumes them under some brief formula by which he expresses his desire to confess them and receive absolution for them. The priest must in this case of course retain at least a general and vague knowledge of the sins which he absolves.

3. A dying person, who through weakness or other causes is unable to make a full confession, may be absolved absolutely if he mentions what sins he can, or even if he asks for the absolution of his sins, for such a confession is formally integral.

The Ritual prescribes that a dying person who has lost the use of his senses is to be absolved even if he previously only expressed a desire himself or through others to receive absolution. In this case, also, it would seem that the absolution should be absolute.

Dying persons who have lost the use of their senses may be absolved conditionally even if they give no certain signs of a desire to confess or of sorrow for their sins. It may

be that in such a state the dying person has the requisite dispositions and is trying his best to give expression to them, and so the movements of the body or his labored breathing may be indications of a wish to receive absolution. At any rate in such a case of necessity we may use even a slenderly probable opinion, and it is now the common practice to absolve conditionally in such cases.

CHAPTER VII

THE APPROBATION OF THE MINISTER OF PENANCE

1. No one but a priest can administer the sacrament of Penance. The Council of Trent passed the following decree: "If any one saith . . . that not priests alone are the ministers of absolution but that to all and to each of the faithful of Christ is it said: 'Whatsoever you shall bind upon earth shall be bound also in heaven, and whatsoever you shall loose upon earth shall be loosed also in heaven'; and 'whose sins you shall forgive they are forgiven them, and whose sins you shall retain they are retained'; by virtue of which words every one is able to absolve from sins, to wit, from public sins by reproof only, provided he who is reproved yield thereto, and from secret sins by a voluntary confession; let him be anathema." [1]

Not every priest, however, can hear confessions; besides the power of Orders he must have the power of jurisdiction; and except in certain cases before receiving jurisdiction he must by a decree of the Council of Trent have received episcopal approbation. It is about this approbation that we have to treat here.

The decree of the Council of Trent is as follows: "Although priests receive in their ordination the power of absolving from sins, nevertheless the Holy Synod ordains that no one, even though he be a regular, is able to hear the confessions of seculars, not even of priests, and that he

[1] Sess. xiv, c. 10.

is not to be reputed fit thereunto, unless he either holds a parochial benefice, or is by the bishops after an examination, if they shall think it necessary, or in some other manner, judged capable; and has obtained their approval, which shall be granted gratuitously; any privileges and customs to the contrary notwithstanding, though they be immemorial." [1]

The approbation of the bishop then is necessary by ecclesiastical law to enable a priest to hear the confessions of seculars, even of priests, validly, unless the priest hold a parochial benefice, for then he can hear the confessions of his parishioners without approbation. Nor is any approbation required to hear the confessions of regulars with solemn vows. We may define this approbation as the juridical judgment of the bishop that a priest is fit to hear confessions. It testifies to the priest's fitness and makes him capable of receiving jurisdiction. The required fitness consists in having the necessary knowledge, prudence, and virtue, and the bishop may satisfy himself on these points by subjecting the candidate, whether he be a secular or a regular, to an examination. The bishop whose approbation is required is the ordinary of the place where the confession is heard, and he may or may not be also the ordinary of the priest or of the penitent. This is now a settled point of ecclesiastical law, though for some time subsequent to the Council of Trent it was a matter much canvassed among divines.

There was also a controversy as to whether approbation was necessary in order to absolve from venial sins or mortal sins that have been already confessed, but Innocent XI forbade bishops to allow priests to absolve even such sins

[1] Sess. xxiii, c. 15, de ref.

without their approbation, and since this decree it has been unlawful to do so, if not invalid, as the more common opinion holds. The bishop may grant approbation himself or through his vicar-general. While the See is vacant, the vicar-capitular grants approbation.

It is not sufficient for the confessor to presume that the bishop will grant him approbation; he must have received it before exercising his functions, for it is a condition precedent for the valid exercise of delegated jurisdiction.

2. The bishop may, and ordinarily does, limit the approbation which he grants to a fixed time, to a certain place, and to certain classes of penitents. In England the faculties of the younger clergy are usually granted from synod to synod, at which time the approbation previously granted will lapse unless renewed. The approbation is usually valid for the whole diocese, but nothing prevents it being limited to a particular district. Nuns and females living in convents are commonly excepted from general approbation unless when they are lawfully outside the convent; in order to hear their confessions validly within the convent special approbation is required.

NOTE. — It can not be said that the practice which exists in England prevails also in the United States. While in this country nuns are frequently excepted from general approbation, it is rare to except other females living in convents. Thus priests having ordinary faculties can in most dioceses hear the confessions of children in a boarding-school in charge of Sisters, as also the confessions of other females in the convent, provided these are not Religious, *i.e.*, by their vows, or by being aspirants, as novices or postulants. — END OF NOTE.

3. For good cause the bishop may recall the approbation which he has once granted, and as he is the judge whether there be a good cause or not, practically a priest can not validly hear confessions when the bishop has revoked his approbation, even though the priest maintain that there is no just cause for doing so. Of course a bishop would act unjustly in recalling a priest's approbation and thus placing him under suspicion, unless he had sufficient and certain ground to go upon.

CHAPTER VIII

THE JURISDICTION OF THE MINISTER OF PENANCE

1. PRIESTS are judges in the tribunal of Penance, and judges must have jurisdiction if their sentence is to take effect. As the Council of Trent teaches: "Wherefore, since the nature and order of a judgment require this, that sentence be passed only on those subject to that judicature, it has ever been firmly held in the Church of God, and this synod ratifies it as a thing most true, that the absolution which a priest pronounces upon one over whom he has not either an ordinary or a delegated jurisdiction ought to be of no weight whatever." [1]

Jurisdiction in general is the power of ruling subjects. We must distinguish jurisdiction in the internal forum from jurisdiction in the external forum. The latter has reference primarily and directly to the common good, to promote which it makes laws, administers justice, and directs the machinery of government. Jurisdiction in the internal forum refers directly and primarily to the good of the individual soul, whose actions it directs toward God. It is exercised either in the sacrament of Penance, when sins are forgiven, or outside the sacred tribunal, as when a dispensation is granted from ecclesiastical law. Again, jurisdiction is either ordinary or delegated. Ordi-

[1] Sess. xiv, c. 7.

nary jurisdiction is the authority which is exercised in virtue of an office which one holds and in one's own name; delegated jurisdiction is granted by one who has ordinary jurisdiction and is exercised in that person's name.

As a general rule, one who has delegated jurisdiction can not subdelegate it to another, but there are two exceptions to this rule. Delegated jurisdiction which is annexed to an office, like the power which bishops for many purposes have over regulars, may be subdelegated for particular cases. General delegation for a whole class of matters may also be subdelegated in part for particular cases.

From what has been said it will be clear that bishops have ordinary jurisdiction over their diocesans both in the external and in the internal forum. A parish priest has ordinary jurisdiction in the internal forum alone. Missioners with the cure of souls in England and in the United States exercise their functions in the name of the bishop of the diocese, and have only delegated jurisdiction in the internal forum. Simple confessors also have delegated jurisdiction.

Ordinary jurisdiction ceases with the loss of the office to which it was attached, or if the holder of it fall under censure, and as being under censure is to be avoided. Delegated jurisdiction ceases after the lapse of the time for which it was granted, and when revoked by a superior. Delegated jurisdiction for a particular case ceases on the death of him who delegated it, or on his removal from office, if nothing has been done in the matter; otherwise it lasts until the matter is concluded. Delegated jurisdiction for causes in general or for hearing confessions does not cease on the death of him who granted it, or on his removal from office, if it was granted for a definite period,

or until revoked, or even probably if granted during goodwill.

2. Although as a general rule absolution given by a priest who has no jurisdiction is null and void, yet there are certain cases in which the Church supplies jurisdiction so that the act may be valid. One of these cases is mentioned by the Council of Trent:[1] "Nevertheless, for fear lest any may perish on this account, it has always been very piously observed in the said Church of God, that there be no reservation at the point of death, and that therefore all priests may absolve all penitents whatsoever from every kind of sins and censures whatever."

"The point of death" is not to be understood too literally; it means the same as "danger of death," such as arises from a serious illness, a dangerous surgical operation, or an imminent battle in war.

Any one, then, who has priest's orders, even though he be a heretic or schismatic, may validly absolve any penitent who is in danger of death. Whether a priest without faculties may do this, even when there is another approved confessor present, is disputed. A clause in the Ritual seems to imply that a simple priest can only give absolution if an approved confessor be not present, and this is the teaching of St. Alphonsus and of many other divines. Others, however, point out that no such limitation appears in the words of Trent, nor does the Ritual strictly impose the limitation; it only insinuates what in practice should ordinarily be done. A simple priest, then, has at least probable jurisdiction over a penitent who is in danger of death, even when an approved confessor is also at hand.

Another case where the Church supplies jurisdiction is

[1] Sess. xiv, c. 7.

when a priest without faculties hears confessions and he is commonly supposed to have faculties with a colorable title. Such a title exists when the faculties were indeed granted, but invalidly on account of some secret flaw. That the Church supplies in these circumstances is certain from the law *Barbarius*,[1] and from the chapter *Infamis* in the Decretum of Gratian.[2]

Even if there be common error about the priest's faculties without colorable title, it is probable that the Church supplies, because of the authority of many theologians who teach this, and the public good seems to require it as in the former case, though there is no text of law to prove it.

Although the Church supplies jurisdiction in these cases for the good of the faithful, yet a priest who knowingly heard confessions without faculties would usurp jurisdiction and commit a grievous sin.

The Church does not supply jurisdiction when there is only private error on the part of one or two.

Finally, the Church supplies jurisdiction as far as it is necessary to do so when a confessor gives absolution relying on probable jurisdiction. For it is the common practice of confessors to act on probable grounds for jurisdiction, and a custom approved by the Church is a valid source of jurisdiction. Absolution, then, given by a priest with probable jurisdiction is valid and lawful.

When the possession of jurisdiction is doubtful, or when the priest has no solid grounds for thinking that he has jurisdiction, he may not lawfully give absolution without necessity. For he would expose himself to the danger of confecting a sacrament which is null and void, to the

[1] Dig. 3, de officio prætoris. [2] c. 1, C. iii, q. 7.

spiritual detriment of the penitent. In case of necessity, however, when the penitent wishes to make his Easter duty, or to avoid his spiritual loss, the priest may absolve him conditionally with doubtful jurisdiction, warning the penitent of the doubt, and leaving him to obtain absolution that is certainly valid if he choose to do so.

3. Ordinary jurisdiction is personal and follows its possessor wherever he goes, so that a bishop or a parish priest may hear the confessions of their subjects wherever they meet them, even without the approbation of the local ordinary. On the other hand, delegated jurisdiction is restricted within the limits for which it was granted, and so a missionary priest can not hear the confessions even of his own flock when he is outside the diocese or district to which his faculties are confined.

Regulars have a special privilege by which they can lawfully hear the confessions of all who come to them in the place for which they are approved. Secular confessors have obtained the same faculty from custom, and so now strangers from other dioceses may validly and lawfully confess to any confessor, secular or regular, who has the approbation of the ordinary of the place. This is now a general custom of the Church, sanctioned by the Holy See, and therefore part of the common law of the Church. No bishop, then, has the power to forbid his subjects to go outside the diocese for confession to priests belonging to other dioceses. In doing so they use a right granted them by the Church.

4. Military chaplains may hear the confessions of the soldiers committed to their charge while they are in camp or on the march without the approbation of the ordinary in whose diocese they happen to be; but when the soldiers

are in barracks or on garrison duty, their confessors require the approbation of the bishop of the place, unless the contrary is specially set down in their faculties. By a decree of Propaganda, May 15, 1906, the Archbishop of Westminster, for the time being, is the Superior of all commissioned military and naval chaplains of the British Empire. He grants them the faculties necessary for the exercise of their office, with the exception of the chaplains in Ireland and India.[1]

By recent decrees of the Holy Office, a priest on board ship who has faculties for hearing confessions either from his own bishop, or from the bishop of the port of embarkation, or from the bishop of any other place at which the ship touches, may hear the confessions in the ship of all fellow-passengers or of any who come to him; and if there is no priest at all or only one in a place where he happens to go on shore, and the ordinary can not easily be reached, he may hear the confession of any one who asks him to do so on land, and absolve him from cases reserved to the bishop.[2]

[1] A.S.S. xl, p. 308.

[2] S.O., April 4, 1900; August 23, 1905; December 12, 1906.

CHAPTER IX

THE CONFESSORS OF RELIGIOUS

1. THE confessors in Religious Orders which are exempt from the jurisdiction of the ordinaries, get their jurisdiction for hearing confessions from the Holy See through their Superiors. No approbation is required to hear the confessions of regulars, and so a regular confessor who is deputed by his Superior to hear confessions can hear those of his religious brethren and the novices, unless there is some special rule about these latter. By a special privilege granted by the Holy See they can also hear the confessions of those seculars who live in the monastery day and night in the service and under the obedience of the Religious. Whether they can also without the approbation of the ordinary hear the confessions of boys who are living with them for the purpose of education, is disputed among canonists and divines. Many distinguished authorities hold that the privilege of hearing those in their service may legitimately be extended to boys living under their obedience for the purpose of receiving their education, and whatever may be said for or against this contention several Orders have obtained special privileges by which their confessors need no approbation of the bishop to hear the confessions of their pupils. The regular Orders share in these privileges, which extend not

merely to boarders but also to day scholars, as long as these are within the limits of the monastery.

In order to hear the confessions of other seculars a regular confessor must, as we saw above, be approved by the bishop of the place where the confessions are heard. The bishop usually grants *faculties*, which comprise not only approbation but also jurisdiction; so that a regular who has faculties for hearing confessions from the bishop has his jurisdiction from a twofold source. Before granting faculties to a regular, the bishop may require him to stand an examination, but if after examination the regular proves himself fit the bishop is bound to grant him permanent faculties, which he can not subsequently revoke except for grave fault or just cause connected with confession.

2. Religious living in community are bound to confess to the regular confessors who are deputed by the Superior to hear them, nor can they validly confess to externs. Superiors themselves may not hear the confessions of their subjects unless these have incurred a reserved case, or desire of their own free will to confess to them.

While on a journey, Religious should confess to their companion if they have one who is fit to hear their confessions. Such companion will be fit if he is in priest's orders, has the requisite knowledge of moral theology, and is not under censure. If they have no fit companion, Religious on a journey may confess to any other fit priest, whether secular or regular, even if he is not approved, unless approbation is required by the constitutions of the Order to which they belong.

3. The Church has made certain special laws with regard to the confessions of nuns. For each convent of

enclosed nuns there must be one ordinary confessor of mature years, who must be specially approved for that convent by the bishop, and the approbation is usually given for three years. Besides the ordinary confessor an extraordinary confessor must be offered the nuns two or three times a year, who must have the same qualities as the ordinary confessor and must also be specially approved by the bishop for the particular convent. The extraordinary confessor usually visits the convent during the ember weeks, and when he comes all the nuns must present themselves to him to receive his blessing, even if they do not wish to confess to him.

Furthermore, by the decree (S.C.EE. and RR.) *Quemadmodum*, December 17, 1890, Superiors may not refuse the request of a nun who at other times, and especially when in danger of death, asks for some particular confessor for the good of her soul. If the Superior knows that the request is unreasonable or made without sufficient need, she may have recourse to the ordinary; and the confessor is not bound to go when asked for, if he knows that there is no good reason for his being summoned.

4. Enclosed nuns with solemn vows were specially had in view in the above legislation, but by degrees the same rules were extended to nuns with simple vows without papal enclosure, and Leo XIII expressly sanctioned this by his constitution, *Conditæ a Christo*, December 8, 1900.

When a nun is lawfully outside her convent she may go to confession to any approved confessor according to the mind of the Church, expressed in several decrees of the Roman Congregations and in the *Normæ* published June 28, 1901. Sometimes bishops express a wish that nuns, especially if they habitually confess in a public church,

should go to the head priest, when there are several in charge of a church. Such a wish or command should of course be obeyed by the nuns, but it does not deprive the other priests of the jurisdiction which they have received.

CHAPTER X

RESERVED CASES

1. THE Council of Trent says:[1] "It hath seemed to our most holy Fathers to be of great importance to the discipline of the Christian people that certain more atrocious and more heinous crimes should be absolved not by all priests, but only by the highest priests." And so the absolution of certain graver sins and censures, or *cases* as they are called, is reserved to higher ecclesiastics. Ordinary confessors retain their jurisdiction for other sins, but it is limited, so that they have no authority over reserved cases. The motive for thus reserving sins is the spiritual good of the faithful, so that they may be deterred from committing those sins on account of the difficulty of obtaining absolution for them, and if unfortunately they should fall into them they may have more skilful guides than ordinary confessors are presumed to be.

2. Reservation is the limitation of jurisdiction, and so in general all those who have ordinary jurisdiction, when they delegate it to others, may reserve some cases for treatment in their own tribunal.

In particular the Pope reserves certain censures and sins of all the faithful throughout the world. In nearly all papal cases both the censure and the sin are reserved, but the sin is reserved on account of the censure, so that

[1] Sess. xiv, c. 7.

if through any cause the censure is not incurred, then the sin is not reserved. The constitution *Apostolicæ Sedis* of Pius IX contains a catalogue of most of the papal cases which have a censure attached. They are classed in series; the first contains cases specially reserved to the Holy See; the second, cases simply reserved to the Holy See; the third, cases reserved to the bishops; the fourth, cases reserved to no one, from which therefore all approved confessors may absolve. Besides the cases contained in the constitution *Apostolicæ Sedis*, priests who violate the rules laid down by the decree S. C. C., May 11, 1904, with reference to trading in stipends for Masses, incur suspension reserved to the Pope, and laymen incur excommunication reserved to the bishop. There is one papal case with no censure annexed, *i.e.*, false accusation of solicitation in the sacred tribunal, according to the constitution of Benedict XIV, *Sacramentum Pœnitentiæ*.

Bishops also may reserve cases to themselves, but these should not be too many; they should be only the more serious and atrocious crimes, and not those which the Pope reserves to himself. In England the First and Fourth Synod of Westminster reserved to the bishop the case of a priest going to the theater and thereby incurring suspension. In the United States two cases are reserved by provincial law: (*a*) the excommunication incurred by those who attempt to marry again after getting a civil divorce; (*b*) the excommunication incurred by those who marry before any non-Catholic minister.

NOTE. — The first of these two cases is expressed by the Third Plenary Council of Baltimore (n. 124) in the following words: "*Ad hæc crimina compescenda pœnam excom-*

municationis statuimus, Ordinario reservatam, ipso facto incurrendam ab iis, qui postquam divortium civile obtinue rint, matrimonium ausi fuerint attentare." From the terms here employed it is clear that to incur this censure the person should have obtained a civil divorce before attempting another marriage. It is also required for the censure that the previous marriage should have been validly contracted and should still exist, since it was not the intention of the bishops to inflict excommunication upon one who had been invalidly married on account of some divine or ecclesiastical impediment, and, having procured a civil divorce in order to escape legal penalties, would contract marriage with some other. This is evident from the words immediately preceding those cited above: "*Novum matrimonium inire attentant legitimo vinculo posthabito, quod coram Deo et Ecclesia adhuc manet.*" It would also appear necessary for incurring this censure that the person should actually go through the form or ceremony of another marriage, and not sufficient, *e.g.*, to manifest the intention of contracting another marriage, nor even to make application to a priest or other person for this purpose, because the words "*novum matrimonium inire attentat,*" may fairly be taken to require the attempt of another marriage to be completed by a matrimonial ceremony. Ignorance of the censure on the part of the person who committed the crime to which the censure is attached is deemed sufficient to excuse from incurring it, even though the ignorance may have been gravely culpable. It would seem from the form of expression used, "*ausi fuerint,*" that knowledge of the existence of the censure is required in order to incur it, and that *ignorantia crassa*, or even *affectata*, would not suffice. This point is deserving of

special notice, because if the censure be not incurred, a priest possessing ordinary faculties may give absolution without having recourse to the bishop, since it is the excommunication which is declared to be reserved. Whether the excommunication affects both parties to the attempted marriage, or only the one who had obtained a civil divorce, is not quite evident. The words are capable of either interpretation, especially when the two parties who wished to contract marriage co-operated in procuring the divorce. However, according to the more exact meaning of the clause, it is the persons who obtained a divorce and then attempted marriage who are affected by the excommunication, and not those others with whom they attempt marriage. In some dioceses of this country excommunication is incurred by those who knowingly assist as witnesses (groomsman and bridesmaid) of such invalid marriages. In the statutes of the archdiocese of St. Louis (n. 119) the following words are added: "*Itemque testes authorizati, qui scienter sacrilege hujusmodi matrimonio assistant.*"

The second excommunication referred to by the author, as reserved in the United States, is set down in n. 127 of the Third Plenary Council of Baltimore. In general those Catholics who get married before a minister of a non-Catholic sect incur excommunication reserved to the ordinary. The censure affects any Catholic of the United States, whether he has been practising his religious duties as a Catholic or not; nor does it make any difference as regards this penalty, whether both contracting parties are Catholics or only one of them; in either case the excommunication is inflicted upon the Catholic. To incur this censure the marriage should be contracted before a minis-

ter of some non-Catholic sect. It is immaterial so far as the censure is concerned whether the marriage be valid or invalid. The impediment of *Disparitas Cultus* may exist, or both parties may be baptized and may have some diriment impediment, or there may be no diriment impediment whatever; in any of these cases the censure is equally incurred, because the words, "*contraxerit vel attentaverit*," in the decree plainly signify that even an attempted marriage is sufficient to incur the censure. It would appear from the words of the decree, "*coram ministro cujuscunque sectæ acatholicæ*," that the censure is incurred when the marriage ceremony is performed before the minister of any denomination, heretical, Jewish, or any other. Still the clause, "*coram ministro*" signifies something more than the actual presence of the minister. He may be present while the ceremony of marriage is being performed without having any share in the function; unless he officiate at the ceremony, the censure would not be incurred, since it is on account of the favor shown to the sect by its minister officially assisting that the censure is inflicted. If a civil magistrate perform the marriage ceremony, the censure is not incurred; even if the civil officer happened to be a minister of some sect, the censure would not appear to be incurred when he acted in his civil capacity only. The reason is that the marriage would not be celebrated before a minister as such, nor would the motive for the infliction of excommunication, *viz.*, favor to a non-Catholic sect, be present. It is also to be noticed that the excommunication imposed for this sin is reserved, so that a priest with ordinary faculties can not absolve the penitent. The particular manner in which the reservation is made is expressed in the decree itself (n. 127). If a

Catholic has committed the sin outside his own diocese, the censure is reserved to the bishops of the United States, any one of whom either personally or through a priest delegated by him can absolve from the excommunication. If the sin be committed within his diocese, the excommunication is reserved to the bishop of that diocese, who can absolve the penitent or communicate faculties to a priest for this purpose. In this latter hypothesis, when the crime was committed in the diocese of the penitent, it is provided that he may receive absolution from another bishop, to whom he would have recourse without any fraudulent intention of evading the law requiring him to refer the case to his own bishop.

Regarding this censure a question has been raised, *viz.*, How did the Third Plenary Council of Baltimore reserve this case since it had already been reserved to the Sovereign Pontiff? (Cf. Tanquerey, *De Matrimonio,* n. 251.) It is quite certain that those who get married before an heretical minister incur papal excommunication. The Congregation of the Holy Office (May 11, 1892) declared: "*Eos qui matrimonium coram ministro heretico ineant, censuram contrahere.*" Those who get married before an heretical minister incur the first censure of those specially reserved to the Roman Pontiff in the constitution "*Apostolicæ Sedis,*" inasmuch as they are deemed "*fautores*" in relation to heretics. On the other hand, by a decree of the Sacred Congregation of Bishops and Regulars (November 26, 1602), held universally by theologians as still in force, bishops are forbidden to reserve cases already reserved to the Sovereign Pontiff. "*Prohibent etiam ne (Episcopi) sibi superflue reservent casus in Bulla Cœnæ Domini legi consueta contentos, neque alios Sedi Apostolicæ specialiter*

reservatos." Some answer this difficulty by saying that in the Third Plenary Council of Baltimore the bishops inflicted excommunication reserved to the ordinary on account of irreverence to the laws of the Church, scandal, etc.; while the papal excommunication was inflicted on account of suspicion of heresy. (Cf. Tanquerey, *l.c.*) According to this opinion, a bishop may reserve a case already reserved to the Roman Pontiff, if he reserve it from a different motive. It is not easy to reconcile this view with the obvious meaning of the decree just cited, where there is no reference to the different motives with which cases might be reserved, but a prohibition to reserve cases already reserved to the Holy See, whatever might be the motives of the reservation. A different explanation is given by Putzer (*Commentarium in Apostolicas Facultates*, 5th ed., p. 228, note 1), namely, that the papal excommunication is incurred when the marriage is performed by an heretical minister, and episcopal excommunication is incurred when it is performed by some other non-Catholic minister. This view has the merit of distinguishing between the two classes of cases, one of which is reserved to the Holy See, the other to the ordinary, so that it could not be said that the bishops were violating the prohibition of reserving a case already reserved to the Roman Pontiff. If this opinion be adopted, it follows that a priest having faculties to absolve from papal cases can absolve from the excommunication incurred by a person who was married by an heretical minister, but can not absolve one whose marriage was performed by any other non-Catholic minister, *e.g.*, by a Jewish rabbi. There does not appear to be any serious difficulty in holding this view, except that the clause, "*coram ministro cujuscunque sectæ acatholicæ*," em-

ployed by the bishops, is applicable to the minister of any non-Catholic sect, whether he be a heretic or not; in other words, the excommunication reserved to the ordinary is, according to the more natural meaning of the expression, incurred even when the minister is a heretic, because the universal term, "*acatholicæ*," should be taken as including the particular one, "*heretico*." Hence it is not evident that the bishops intended, as regards the infliction of the censure, to make any distinction between the case of a person getting married by a baptized minister and the case of getting married by an unbaptized one.

Another mode of explaining this excommunication may be proposed, *viz.*, that the Sovereign Pontiff in approving this decree of the Plenary Council permitted an exception to be made to the general law prohibiting bishops to reserve cases already reserved to him. Although by the approval of the decrees of this council *in forma communi*, the Holy See did not convey any guarantee for the canonical or theological accuracy of every statement contained in them, still such recognition affords some reason or presumption in favor of the validity and liceity of this excommunication as reserved to the ordinary. Perhaps a different explanation may be suggested, *viz.*, that the prohibition of reserving cases already reserved to the Holy See refers to bishops acting in their individual capacity, not in their corporate capacity as members of a plenary or provincial council. If either of these two explanations be admitted, the literal and obvious meaning of the decree is preserved and the prohibition of the Congregation of Bishops and Regulars is not violated. It need hardly be remarked that the bishops of the Third Plenary Council of Baltimore did not intend to place any

restriction upon the Sovereign Pontiff that would prevent him from granting faculties to whomsoever he might wish, even in cases reserved by the bishops to themselves. What the bishops did in the decree was in effect this, that as far as they were concerned they communicated to no priest the faculty to absolve from the excommunication incurred by a Catholic who attempted marriage before a minister (heretic or not) of any non-Catholic sect, so that unless the faculty would be obtained from the Roman Pontiff the absolution from the excommunication would be invalid.

Whichever of the foregoing opinions be the correct one, or if none of them be correct, it is the general practice of confessors, secular and regular, to have recourse to the ordinary for the faculties and for the directions to be followed in absolving penitents from this excommunication, whether papal, episcopal, or both combined. In some places, diocesan statutes prescribe that there should be a public retractation made in the Church by the penitent according to a specified formula before receiving absolution; in other places it is deemed more prudent not to insist upon a public retractation lest persons guilty of the crime might abstain from seeking absolution through fear of the humiliation incidental to the publicity, or lest the attention of many others be drawn to the frequency of the sin without sufficient counterbalancing advantages. In any case the directions of the bishop are to be exactly carried out in regard to the conditions for receiving absolution as well as the manner of imparting it. The bishop may require that the penitent be absolved *in foro externo* from the censure, and that the form prescribed in the Ritual for this purpose be observed. It frequently happens that the bishop empowers the priest to absolve from

the excommunication in the tribunal of penance without any absolution *in foro externo.*

It may be well to note that the excommunication, whether papal or episcopal, may not have been actually incurred by the person who was married by a non-Catholic minister, because ignorance of the censure, even though gravely culpable, may not reach that degree commonly called *crassa,* and, if so, would excuse from incurring it. This is not by any means a merely speculative point, as it is very well known to experienced priests that Catholics, while they may be aware of sinning grievously by obtaining the assistance of a non-Catholic minister at their marriage, have often no knowledge of the ecclesiastical law inflicting censure upon such act and thus may escape from incurring censure. When this occurs, *i.e.,* when the censure is not incurred on account of any reason whatsoever, there is no necessity to have recourse to the bishop for faculties, since it is the excommunication which is reserved according to the words of the decree, "*excommunicationem incurrere Episcopo reservatam.*" — END OF NOTE.

Besides these cases reserved by law the bishops reserve a few cases to themselves for which the *pagella* of faculties must be consulted. When the bishops reserve a sin with a censure attached to it, it is a disputed point whether the reservation of the censure is the primary object in view, as in papal cases, or whether the reservation of the sin and of the censure are of equal importance and independent of each other. The solution of the question depends on the intention of him who reserved the case, and so the terms used should be considered.

The Superiors of Religious Orders may also reserve cases of their subjects. Clement VIII issued a list of eleven cases which they might reserve, and forbade them to reserve others except with the consent of a general or provincial chapter of the Order.

3. Certain conditions are required in order that any particular sin may be reserved. First of all it must be a grave sin such as forms the necessary matter of confession, for a venial sin which the penitent need not confess can not be effectually reserved. It is not the practice of the Church to reserve merely internal sins; there must be an external act and as such gravely sinful. So that a slightly indecent word even if uttered with a seriously bad intention would not fall under reservation if all sins of indecency were reserved. The sin must be completed and perfect in its kind, not merely attempted, for reservation is to be strictly interpreted. For the same reason it must be certain that the sin is reserved, so that any prudent doubt of law or of fact whether a particular sin is reserved is sufficient to enable the confessor to give absolution without special faculties.

4. Those who are under the age of puberty do not incur papal cases unless they are expressly included in the law. The only papal case in which they are so included is the violation of the enclosure of nuns. The same rule may be applied to bishops' cases, unless a bishop has made known his intention to bind even those who have not reached the age of puberty. Ignorance of a censure, unless it be crass or supine, excuses from the censure, as is expressly laid down in the Decretals.[1] As in papal cases the reservation of the sin is on account of the censure annexed

[1] c. 2, de const. in 6to.

to it, and ignorance excuses from incurring this, therefore ignorance will excuse one from incurring papal reserved cases to which a censure is attached. The reservation of false accusation of solicitation, the only papal case without censure, is very probably penal, as theologians gather from the words used by Benedict XIV in the constitution *Sacramentum Pœnitentiæ*, and as ignorance of a penalty excuses one from incurring it, therefore ignorance will excuse one from incurring this reserved case.

It is a disputed point whether ignorance excuses from incurring bishops' cases or not. It excuses, indeed, from incurring any *censure* inflicted by any ecclesiastical superior, but it certainly does not excuse from incurring a reserved *sin* if the bishop has expressed his intention of reserving it even when committed in ignorance of the reservation. Otherwise it is probable that ignorance excuses in episcopal as well as in papal cases, for reservation is partly penal, and it can not attain its end of deterring the faithful from committing reserved sins if they are ignorant of the reservation.

It is a disputed point whether strangers are absolved by virtue of jurisdiction tacitly granted by their own bishop, or like other subjects of the bishop in whose diocese they are staying. It is very commonly held now that for the purpose of sacramental absolution a stranger is subject to the jurisdiction of the bishop of the place, like the rest of the faithful. Still the other view is probable, and so a stranger may be absolved from a sin which is reserved in the place where he makes his confession if it is not also reserved in his place of domicile, and on the other hand he may be absolved from a sin which is reserved in his own diocese if it is not reserved in the place

where he makes his confession. It is plain, however, that he can not be absolved without special faculties from a case which is reserved in both dioceses, nor can he be absolved if he came fraudulently from his own diocese with the primary intention of escaping his own bishop, on account of a special clause in the constitution, *Superna*, of Clement X.

5. In general, absolution for reserved cases may be had from the person who reserved them, his successor, his superior who has jurisdiction over the same subjects, and from any one who has been specially delegated by one of these to grant absolution.

As we saw above, according to the Council of Trent, there is no reservation when the penitent is in danger of death, and so any priest may then absolve any penitent from every kind of censures and sins whatever. Nor, at least probably, does any obligation remain to be fulfilled in case of recovery by those who have been thus absolved, except when they have been absolved from cases specially reserved to the Holy See. In that case, one absolved by a simple confessor is bound, if he recovers, by a clause in the constitution *Apostolicæ Sedis*, under pain of falling again under the same censure, to submit his case either personally or through his confessor to the Holy See, or to obtain absolution from a confessor with special faculties.

Moreover, when it is necessary for the penitent to receive absolution in order to avoid scandal, or loss of reputation, or because he must say Mass or make his Easter communion, or when he feels it a great hardship to remain in the state of sin for the time required to obtain special faculties, a simple confessor may absolve him directly from any papal case. The penitent, however, is then

bound within a month under pain of falling again under the same censure to submit his case by letter or through his confessor or another priest to the Grand Penitentiary at Rome, or, in countries under Propaganda, to the cardinal prefect of that congregation, if he prefer to do so. The name of the penitent of course is not given, but the address to which the reply should be sent is indicated.

If there is no just cause for giving absolution at once, the case must be submitted by letter as above to Rome, asking for special faculties to give absolution which will be granted under the prescribed conditions when the reply arrives.

This method of treating papal cases was sanctioned by the decree of the Holy Office, June 23, 1886, and confirmed in detail by subsequent decrees. Confessors who have missionary faculties in England thereby receive authority at present to absolve their penitents from all papal cases except the attempted absolution of an accomplice in a sin against chastity, and the false accusation of solicitation.

NOTE. — In the United States very extensive faculties are granted to the bishops for absolving from papal cases, and these faculties may be subdelegated to priests engaged in the sacred ministry. Under Article 16, Form I, authority is conferred upon the bishops in the following words: "*Absolvendi ab omnibus censuris in Constitutione 'Apostolicæ Sedis moderationi,'* October 12, 1869, *Romano Pontifici etiam speciali modo reservatis, excepta absolutione complicis in peccato turpi.*" Without entering into an explanation of the censures given in this constitution, it may be observed that our bishops are empowered to absolve from them whether they are simply or specially

reserved to the Holy See. Having the faculties to absolve from papal censures, they can likewise absolve from the sins to which those censures are attached, since the sins are only reserved on account of the censure. According to Article 16 there is only one censure of the constitution *Apostolicæ Sedis*, in which the bishops are restricted, namely, the excommunication inflicted upon the confessor who attempted to absolve his accomplice *in peccato turpi*. In dealing with this censure our bishops do not possess any special faculty which would relieve them from the grave obligation of referring to Rome in accordance with the decree of 1886, even though they, like simple confessors, may absolve from the excommunication in urgent cases. There is no need to refer to a special faculty, which some of our bishops possessed, of absolving in a certain number of cases of this kind, either by themselves or by some one delegated by them. This faculty, if still possessed, is not of so much importance after the decree of 1886, when even simple confessors can absolve from the censure, while the obligation on the part of the penitent to have recourse to the Holy See within a month is to be fulfilled under the penalty of falling again into the censure from which he was absolved.

Besides the papal censures reserved to the Roman Pontiff in the constitution *Apostolicæ Sedis*, the bishops in this country can absolve from those censures which have been inflicted by the Sovereign Pontiff since the publication of that constitution, when these can be brought under some heading of the constitution. (Cf. Putzer, n. 140.)

It may be remarked that under Article 16 the bishops do not possess the faculty of absolving from censures

which the Sovereign Pontiff inflicts upon a person by judicial sentence or by special mandate; nor under that article is a bishop empowered to absolve from censures which are reserved to and by another bishop; nor has a bishop by the same article the faculty to absolve from censures reserved by Religious Superiors to themselves.

There is one papal case specially, or, more accurately, most specially reserved by the Sovereign Pontiff, yet without censure — false denunciation for solicitation — from which our bishops can not absolve except under the circumstances in which, like ordinary confessors, they could absolve in the case of the attempted absolution of the accomplice. To incur this reservation, it is required that the false statement against the priest be made on oath; otherwise a simple confessor can absolve from the sin without afterward referring the case to Rome.

To what extent the faculties for giving absolution possessed by the bishops are communicated to priests, may usually be learned from the *pagella*. The general practice in the United States is that the bishops grant to their priests all the faculties they can in regard to papal cases; while the cases reserved by themselves are very few. It is worthy of note that under Article 15, Form I, the Holy See has granted powers to our bishops regarding heresy, which powers may also be and generally are communicated to priests in the ministry. — END OF NOTE.

Regulars also have certain privileges with regard to absolving from papal cases, the extent of which is known from the special grants made to them.

The method prescribed for papal cases is being applied also to bishops' cases except that when absolution is

given at once without special faculties on account of some necessity for receiving absolution on the part of the penitent, that absolution is indirect, not direct, unless the penitent will not be able to present himself to the bishop for the next six months. This is a consequence of the older discipline by which the penitent was bound to present himself personally to the Superior who had reserved the sin, or to his delegate. There was no obligation of writing to the Superior. If the penitent was prevented from presenting himself to the Superior for five years, the impediment was deemed perpetual and the reservation ceased. If the impediment lasted from six months to five years, any confessor might absolve the reserved sin directly; but the penitent was obliged to present himself to the Superior when he could do so. If the impediment did not last for six months, the confessor had no direct power over the reserved sin, but he might absolve directly from other sins and indirectly from the reserved sin if the penitent were for some cause obliged to seek absolution. The common practice, however, is for confessors who get a case reserved to the bishop in confession to defer absolution until special faculties can be obtained for the case from the bishop. The penitent will then again present himself to the confessor and receive direct absolution with the monitions of the bishop.

The method of dealing with Religious who have incurred cases reserved in their Order depends on the rules and constitutions of the Order. The members of exempt Orders are not themselves subject to episcopal reservations, though of course they can not absolve seculars who have incurred them without special faculties from the bishop.

Whenever the penitent can obtain direct absolution for

a reserved sin and desires to go to confession, he is bound to make a full confession, including the reserved sin. If, however, the only mortal sin on his conscience is reserved to the bishop, he is not bound to go to confession to a simple priest who can only give indirect absolution before holy communion, when he is compelled to receive communion to avoid scandal, loss of reputation, or other just cause; it will be sufficient if he make an act of contrition, for he has not an opportunity of confessing to a priest with the requisite jurisdiction. If he has other mortal sins besides a reserved case, some good authors still deny that he is bound to go to confession for the same reason, though the most common opinion binds him to go, for he can obtain direct absolution from the non-reserved mortal sins, as the confessor has jurisdiction for them, and at the same time he is indirectly absolved from the reserved sin. At any rate he will be bound at some future time to obtain direct absolution from the reserved sin.

CHAPTER XI

DE ABUSU SACRAMENTI PŒNITENTIÆ

1. Sanctissimis institutis abuti hominum malitia valet, nec sacramento Pœnitentiæ excepto. Ecclesia tamen nihil intentatum reliquit ut abusus hujus sacramenti evitentur vel ut iis si forte occurrant aptum remedium præbeatur. Gregorius XV aliique Romani Pontifices et præsertim Benedictus XIV leges tulerunt contra sollicitationem in sacro tribunali ac absolutionem complicis in peccato turpi. De his in hoc capite agimus ac primo de sollicitatione.

De crimine sollicitationis in sacro tribunali Benedictus XIV Constitutione *Sacramentum Pœnitentiæ* tria statuit. Primo committit ac mandat omnibus locorum Ordinariis universi orbis christiani in suis respectivis diœcesibus ut diligenter omnique humano respectu postposito inquirant et procedant contra omnes ac singulos sacerdotes, tam seculraes quam regulares quomodolibet exemptos, qui sollicitationis sunt rei, eosque graviter puniant. Rei autem sunt sollicitationis qui aliquem pœnitentem, quæcumque persona illa sit, vel in actu sacramentalis confessionis, vel ante, vel immediate post confessionem, vel occasione, aut prætextu confessionis vel etiam extra occasionem confessionis in confessionali, sive in alio loco ad confessiones audiendas destinato aut electo, simulatione audiendi ibidem confessionem, ad inhonesta et turpia

sollicitare, vel provocare, sive verbis, sive signis, sive nutibus, sive tactu, sive per scripturam aut tunc aut post legendam, tentaverint, aut cum eis illicitos et inhonestos sermones vel tractatus temerario ausu habuerint. Secundo, omnes et singuli sacerdotes ad confessiones audiendas constituti tenentur suos pœnitentes quos noverint fuisse ab aliis sollicitatos sedulo monere de obligatione denunciandi locorum ordinariis personam quæ sollicitationem commiserit, etiamsi sacerdos sit qui jurisdictione ad absolutionem valide impertiendam careat, aut sollicitatio inter confessarium et pœnitentem mutua fuerit, sive sollicitationi pœnitens consenserit, sive consensum minime præstiterit, vel longum tempus post ipsam sollicitationem jam effluxerit, aut sollicitatio a confessario non pro seipso sed pro alia persona peracta fuerit. Tertio, potestas absolvendi eos qui sive per se sive per alios apud ecclesiasticos judices falso innoxios sacerdotes sollicitationis accusant reservatur Summo Pontifici, ut tam detestabile facinus metu magnitudinis pœnæ coerceatur.

2. Ex dictis igitur, quæ ferè ad verbum in Constitutione Benedicti XIV inveniuntur, constat Ordinarios teneri sub gravi inquirere in sollicitantes ac hujus criminis reos graviter punire. Praxis Sacri Officii est ut post unam alteramve denunciationem sacerdos denunciatus observetur. Post tertiam vero contra suspectum procedi solet. Ad formale examen vocantur parochi aliique spectatæ virtutis viri qui de indole et qualitatibus denunciantis et denunciati sub juramento de veritate dicenda et de secreto servando testimonium proferunt. Pœnæ jure reis infligendæ sunt privatio omnium facultatum ad confessiones excipiendas, suspensio ab exercitio ordinis, privatio beneficiorum, privatio vocis activæ et passivæ si sit regularis,

omnes tamen sunt ferendæ sententiæ. Termini adhibiti in crimine definiendo strictæ sunt interpretationis. *In actu sacramentalis confessionis:* hoc intelligendum est de intervallo quod intercedit inter benedictionem et absolutionem etiam si pœnitens non fuerit absolutus ob defectum dispositionum vel ob aliam causam.

Ante vel immediate post: ita ut nulla actio non referibilis ad sollicitationem intercesserit.

Occasione vel prætextu confessionis: occasio est quando confessio sequebatur vel sequi debebat juxta intentionem petentis. Prætextus habetur quando confessarius ficte proponit confessionem ut sollicitet. Quare si mulier et sacerdos fingunt confessionem faciendam ad alios decipiendos et ad tutius peccandum non est locus denunciandi, nec probabilius si pœnitens prætexat confessionem ad sacerdotem vocandum et sollicitandum. Probabilius non est denunciandus sacerdos qui propter cognitam ex confessione fragilitatem mulieris eam domi sollicitat, quia occasione scientiæ ex confessione habitæ sollicitat, non occasione confessionis.

In confessionali sive in alio loco ad confessiones audiendas destinato aut electo simulatione audiendi ibidem confessionem: unde non denunciandus est sacerdos qui sollicitat mulierem stantem ante confessionale, deest enim simulatio audiendi ejus confessionem.

Inhonesta et turpia: haec significant gravia peccata contra sextum decalogi præceptum. Graviter inhonesti sermones vel tractatus quin ulterius procedatur constituunt sollicitationem si ceteræ conditiones habeantur. Qui externe consentit pœnitenti sollicitanti videtur esse denunciandus.

3. Omnes confessarii monere suos pœnitentes, sive

feminas sive masculos tenentur quos ab aliis sacerdotibus fuisse sollicitatos noverint de obligatione denunciandi sacerdotes sollicitantes locorum ordinariis vel Sanctæ Sedi per Sacrum Officium vel per Pœnitentiariam. Infra mensem ab accepta cognitione denunciationis faciendæ obligatio est implenda, aliter pœnitens sollicitatus incurrit excommunicationem nemini reservatam ex Constitutione Pii IX, *Apostolicæ Sedis.* Omnes etiam qui certo sciant casum sollicitationis sacerdotem reum denunciare tenentur, non tamen sub censura. Confessarii monere pœnitentes de obligatione denunciandi sollicitantes tenentur, etiamsi prævideant eos obligationem non impleturos, nisi sint in articulo mortis, tunc enim dissimulare ob salutem animæ licet. Nec capax est absolutionis qui onus implere recusat vel saltem nisi promittat se onus impleturum quum primum poterit. Confessarius audiens pœnitentem qui sollicitatus fuisse videtur, circumstantias casus investigare debet ut moralem certitudinem de crimine patrato acquirat antequam obligationem denunciandi sollicitantem imponat. Denunciatio juridice est facienda, ac proinde qui denunciat personaliter adire debet ordinarium loci ubi crimen patrabatur, ac sub juramento testimonium dare. Qui ordinarium adire nequit, ad eum scribat, ut delegatum sibi substituere valeat ad denunciationem accipiendam. Scriptæ denunciationes anonymæ nullius sunt momenti, nec sufficiunt ad obligationi satisfaciendum.

Qui falso juridice accusat sacerdotem sollicitationis gravissimum committit peccatum cujus absolutio specialissimo modo Romano Pontifici reservatur.

4. Ex eadem Constitutione Benedicti XIV, *Sacramentum Pœnitentiæ,* confessarius pœnitentem quocum peccatum grave contra castitatem commiserit a peccato complicem

absolvere nequit; qui autem talem complicem absolvere attentat in casum incidit specialissimo modo reservatum Romano Pontifici. Eandem pœnam incurrit qui se absolvere fingit vel, sive directe sive indirecte, complicem inducit ad peccatum complicitatis tacendum quum ad confessionem venit. Si vero pœnitens bona fide vel inadvertenter peccatum complicitatis omiserit dum complici confitetur valide ab eo absolvitur. Idem videtur dicendum si complex ab alio sacerdote directe a peccato complicitatis jam absolutus idem peccatum postea tamquam materiam liberam sacerdoti complici confitetur. Præstat autem ut sacerdos complex nunquam confessionem complicis excipiat nisi in casu necessitatis.

Complex vero in peccato turpi hic intelligitur qui interne et externe grave peccatum contra castitatem sive verbis sive aspectu sive facto cum sacerdote etiam ante sacerdotium susceptum commiserit. Ut incurratur censura absolutio debet esse formalis ita ut sacerdos sciat se absolvere pœnitentem complicem, vel saltem ut ejus ignorantia sit crassa et supina. Requiritur etiam ut pœnitens cognoverit se peccasse cum hoc sacerdote sive in actu peccati sive saltem ante absolutionem acceptam, quamvis non sit necessarium ut pœnitens confessarium in actu confessionis agnoscat. Sacerdos igitur qui larvatus et incognitus cum muliere peccavit eam adhuc ignorantem suum complicem absolvere valide potest, nam aliter sese proderet pœnitenti ac alii confessario ad quem pœnitens absolutionis causa accederet.

5. In articulo seu periculo mortis absolutio complicis data a complice sacerdote semper est valida ne anima pereat, ait Benedictus XIV. Præterea complex moribundus qui nequit aut non vult alteri sacerdoti confiteri licite

etiam a complice sacerdote absolvitur. Si vero alius sacerdos etiam non approbatus adsit, vel sine infamia et scandalo advocari possit ad confessionem accipiendam, sacerdos qui complicem in periculo mortis constitutum absolvat excommunicationem non evitat.

In locis remotis ubi complex alium confessarium habere nequit, et in periculo est ne sine absolutione discedat e vita, potest probabiliter a complice absolvi ne anima pereat. Poterit etiam sacerdos facultatem obtinere ut complicem in tanta necessitate absolvat.

CHAPTER XII

THE DUTIES OF A CONFESSOR IN THE CONFESSIONAL

THE confessor does not satisfy his obligations merely by absolving the penitents who come to him, and refusing absolution to those who are not properly disposed. In the confessional he holds the place of Christ for the reconciliation of sinners with God; he is also the minister of the sacrament, and as such he is bound to see that it is validly and lawfully received by the penitent. In other words, as theologians say, the confessor is the spiritual father, doctor, counselor, and judge of his penitents. Something must be said on each of these heads.

SECTION I

The Confessor as Spiritual Father

The confessor should remember how Our Lord used to act toward sinners during His mortal life; with what charity, forbearance, and patience He dealt with them, and he should strive to imitate his divine model. Like Him he should be interested in the souls of men, not in their social position, age, or sex. Whoever they may be, he should receive all sympathetically and kindly. This does not mean that he should treat all precisely in the same way. Just because of his interest in his penitents and of his sympathy for them, he will treat them as their

various needs demand; not expecting the same degree of virtue in all, nor attempting to raise all to the same height of sanctity. He should try to discover what God designs for each soul and be content to second the inspirations of the Holy Spirit.

In dealing with pious penitents, especially of the other sex, he should be brief and austere, otherwise he will lose much time with little or no fruit, and expose himself to no little danger. With these penitents, especially, he should treat of nothing in the confessional except what concerns their consciences, and that in a fatherly way, but briefly. Even if he recognizes his penitents, it will be better as a rule not to show that he knows them for what they are outside the confessional. He will thus be able to deal with them for the good of their souls with more freedom and detachment.

Section II

The Confessor as Physician of Souls

1. It is the confessor's duty not merely to reconcile the sinner with God by absolving him from sin, but by suggesting to him means and remedies against relapse to enable the penitent to lead a good life in future. The confessor is the spiritual physician of souls, and he should be skilled in diagnosing the diseases of the soul, and in applying the proper remedy. Catholic literature is very rich in ascetical books whose special province it is to map out the way of spiritual progress, to point out and describe the many vices and other obstacles to be overcome by the Christian wayfarer, and the means to be taken for the purpose. Among the best known of such works are: Rod-

riguez' "On the Practice of Christian Perfection," "The Devout Life" of St. Francis of Sales, "The Spiritual Exercises" of St. Ignatius, "The Spiritual Combat," by Scupoli, etc. The confessor should make himself as familiar as possible with one or two such treatises, and he should have tested their worth by applying the lessons which they give to the conduct of his own life. Here it will be sufficient briefly to indicate some general remedies which may be usefully prescribed in most cases where there is a sincere desire to amend. Frequent and fervent prayer, frequent reception of the sacraments of Penance and the Eucharist, pious meditation on the end of life and on the presence of God, avoiding evil company and the occasions of sin, avoiding idleness by constant occupation of mind and body, as far as is possible. Besides these general remedies, the confessor may suggest special ones for the correction of particular vices. The selfish and thoughtless should be told to practise kindness to those about them; the proud, acts of humility; the voluptuous, mortification of their passions; the envious, praising the good deeds of others; and so on. There is special difficulty as to the best method of treating recidivists and those who are placed in an occasion of sin, and something must now be said on each of these classes.

2. A recidivist is one who after many confessions has fallen into the same sin without any or scarcely any amendment. There is a controversy among theologians as to whether and on what conditions such a one may be absolved. Certain rigorists maintained that a recidivist could not be absolved until, by abstaining from sin for a considerable time, he had proved the sincerity of his conversion. According to the judgment of St. Alphonsus

there is intolerable rigor in this opinion. On the other hand, laxists held that a penitent who has contracted a habit of sin should be absolved at once without delay even though there be no hope of amendment, provided that he make verbal profession of his sorrow and purpose of amendment. The foregoing proposition was condemned by Innocent XI, and if it were put in practice it would lead to grave abuses. For a confessor can not give absolution to one whom he can not reasonably judge to be truly sorry for his sins. There are cases where in spite of verbal protestations the confessor can not form even a probable judgment that the recidivist is truly sorry for his sins. And sometimes it will benefit the penitent to defer absolution for a short time even if it might absolutely be given at once. The common opinion lies between these two extremes, and we can not do better than explain it in the words of Lugo, for the lengthy discussions of subsequent authors on this question have added nothing of substantial value to the older doctrine.

a. If a confessor judge a penitent, notwithstanding a past habit of sin, to have here and now a true sorrow and a firm resolve not to sin again, he can absolve him; because present sorrow and a purpose of amendment are sufficient, and future amendment is not required. And so he may absolve him even though he thinks he will fall again.

b. But in the second place it is certain that when a priest, considering the past habit of sin, the propensity to it, and other circumstances, can not judge the penitent to be sufficiently averse from the sin, he can not absolve him, however much the penitent asserts that he is sorry, because if the priest does not believe him he has not the requisite ground for giving absolution.

c. It will help toward forming a judgment about the present dispositions of the penitent if he show special signs of sorrow, or if he has already tried to correct his habit, or if having never before been told what means to employ to correct his habit, now, on being told, he willingly accepts and proposes to employ them.

d. Finally, it will sometimes be useful to put off absolution for some days so as to excite the penitent to make greater efforts to overcome himself and show signs of real amendment.[1]

3. An occasion of sin is an external circumstance which leads one to commit sin. It is a proximate occasion if, when a person is placed in it, it leads him to commit sin oftener than not; otherwise it is remote. It is a necessary occasion if he can not avoid it by using ordinary diligence; otherwise it is voluntary.

a. There is no necessity to avoid remote occasions of sin, for it is not possible to do so, and in spite of them sin may be avoided by using the proper means.

b. We are bound to avoid proximate and voluntary occasions of sin, for we can not remain in them without exposing ourselves to the proximate danger of committing sin, and if we voluntarily choose to remain in a proximate occasion we voluntarily choose the sin. As we are bound to avoid sin we are bound to take the necessary means for that end. This doctrine is confirmed by the 61st, 62d, and 63d propositions, condemned by Innocent XI.

c. A necessary occasion is one which we can not avoid. It is physically necessary if we can not physically get away from it; it is morally necessary if it is more difficult to

[1] Lugo, de pœnit. xiv, n. 166.

avoid it than to keep from sin while in it by using proper means and precautions.

There is no obligation to avoid necessary occasions of sin, for we can not be obliged to do what is impossible; but we are bound to take the necessary means to avoid sin in spite of being in the occasion, and such means are always at hand if we have the good will to use them, for God's goodness will never permit us to be tried above our strength. By using the means to avoid sin while placed in an occasion of sin, we make the proximate occasion remote, as theologians say.

It follows from this that one who finds his ordinary avocation in life, which is supposed to be an honest one, a proximate occasion of sin to him, is seldom bound to give it up; he is only bound to make the occasion remote, which is generally possible with a good will and the help of God's grace.

SECTION III

The Confessor as Counselor

1. The duties of the confessor require considerable expert knowledge in one who aspires to the office. He must in the first place have a competent knowledge of Christian morals and of all that belongs to the valid and lawful administration and reception of the sacraments. St. Alphonsus teaches us that it is not sufficient merely to know the general principles of Christian morality; the confessor must have considerable skill in applying those principles correctly, according to the infinite variety which is found in human actions. The confessor should have received a thorough grounding in moral theology during

the course of his priestly studies, and he should continue to keep it up during the rest of his life, for it is quickly lost unless means are taken to keep it fresh in the mind. The Church shows that she is conscious of this danger by insisting that all who have the cure of souls should at certain times every year be present at the conferences of the clergy, where moral questions are discussed. Every confessor is not called upon to be an authority in moral questions, but at least he should be able to decide correctly ordinary doubts and difficulties, and know when to doubt about more serious questions.

2. The confessor is bound to instruct a penitent before he can give him absolution when he finds that he is ignorant of what he must know in order to receive the sacrament of Penance validly and lawfully. And so if the penitent does not know how to make an integral confession, or how to make an act of contrition, the confessor must instruct him. In the same way, he must teach one who is ignorant of those truths which must be believed in order to be saved. Innocent XI condemned the proposition that a man is capable of receiving absolution however great may be his ignorance of the mysteries of the Faith, and even if through culpable negligence he does not know of the mystery of the most blessed Trinity and of the Incarnation of Our Lord Jesus Christ. Ignorance of those Christian truths whose knowledge is required by precept, and of the obligations of one's state of life, is not a bar to valid absolution, and in spite of it absolution may lawfully be given on condition that the penitent undertake to learn what he should know, if the confessor can not give the necessary instruction at once.

3. No general rule can be laid down as to whether the

confessor should instruct a penitent whom he finds to be ignorant on other matters. Various cases must be distinguished. If the ignorance of the penitent is morally hurtful to him, as is an erroneous conscience which thinks that a perfectly harmless act is sinful, the confessor should put his conscience right. Again, if the penitent asks whether an action is lawful or not, the confessor should instruct him. In other cases, if the penitent is ignorant of his obligation, and he would not fulfil it even if he were told, as a general rule the confessor may and should abstain from telling him under the circumstances. For the information would do no good, but only harm, inasmuch as the sins which hitherto were only material would henceforth be formal. There is, however, an exception to this rule when what is done in ignorance and good faith is a cause of public scandal, for then the public good requires that the penitent should be told even to his temporary private loss.

On these principles authors agree that if a confessor detect a diriment impediment between parties who think that they are validly married, he should not inform them of it, at any rate until he has obtained the necessary dispensation, so that he can at once proceed to set the matter right.

Section IV

The Confessor as Judge

1. As judge in the tribunal of Penance the confessor passes sentence and imposes satisfaction proportionate to the sins confessed. If the penitent makes a full confession, is truly sorry for his sins, and is ready to fulfil to the best

of his ability all his grave obligations at least, there is nothing to prevent the confessor giving a penance and absolution at once. There is no necessity for putting questions to well-instructed penitents who make their confession with care and diligence, or to those who have only light matter to confess. If however, the penitent does not fully declare the number and species of his grave sins, or if the confessor is not satisfied about his dispositions, he is bound to question him to procure a full confession and the necessary dispositions before giving absolution.[1]

If the confessor knows that the penitent has committed some serious sin, but says nothing about it in confession, he should question him as to whether there is anything else on his conscience. If the penitent denies that there is, he should as a rule be absolved; it is a received maxim that "the penitent must be believed in his own favor as well as against himself." Even if the sin was known to the confessor from the confession of some one else, he must not of course put any question which would amount to a violation of the seal, but he may put a general question as to whether there is anything else, and if the penitent denies that there is, he may as a rule absolve even then. It may be that the penitent did not commit formal sin, or that he has forgotten it, or thinks that he is not bound to mention it to this confessor, or there may be some mistake on the part of the confessor or the informant. Still if it is quite evident to the confessor that the penitent is making a bad confession, and so is not disposed for absolution, he can not, of course, absolve him.

2. The confessor's obligation of putting questions to the penitent in order to supply any defect on the part of the

[1] 4 Lat. c. 21; Ritual.

latter, is a grave one.' Still it is only secondary; the obligation lies with the penitent in the first place, and so the confessor may be excused from grave sin if occasionally he does not put questions even to obtain what is necessary matter for confession. We may allow this especially when the confessor is weary after hearing a great many confessions, and, partly through weariness, partly through some slight negligence, fails to ask questions which are *per se* necessary.

3. The Ritual and theologians warn the confessor against putting unnecessary and indiscreet questions to the penitent. By doing so he may easily scandalize him or even teach him to commit sin. This is especially the case with regard to the young. In the matter of chastity it is a maxim that it is better to fail in putting many questions than to put one which is not necessary.

The confessor should be moderate in questioning the penitent, and only put questions about matter in which it is probable that he has committed sin. He should remember that the penitent is only bound to confess what his own conscience accuses him of; he does not sin nor is he bound to confess according to the conscience of his confessor.

CHAPTER XIII

MISTAKES MADE IN HEARING CONFESSIONS

1. One who culpably causes unjust harm to another is bound in justice to repair that harm as far as he can. Even if the action which causes harm to another is done innocently, there will nevertheless arise an obligation to prevent the harm as far as possible as soon as the danger is noticed, and if there is grave negligence in doing this without reasonable excuse, injustice will be committed and the obligation of making restitution incurred. A confessor who admits a penitent to confession is bound in justice to absolve him if he is properly disposed for absolution. And so if he has neglected to do so, he must repair the error afterward, especially if the penitent were in danger of death and may die in sin without sacramental absolution.

Similarly, if the confessor gave his penitent false instruction in faith or morals, or bad advice, or bound him to make restitution when he was under no obligation to do so by the law of God, or released him from such an obligation when he was really under it, the confessor must afterward correct his mistake, taking the precaution to ask the penitent's leave to say something to him about his confession if an opportunity is afforded him only out of confession. When the penitent was wrongfully compelled to make restitution with grave fault on the part of the confessor, the latter is bound in justice to make him

restitution for the loss that he has suffered, if he can not otherwise recover his money. The confessor is in the same way bound to make restitution to the defrauded creditor when with grave fault he released a penitent from the obligation of paying a just debt, if in consequence the penitent is now unwilling or unable to fulfil his obligation.

2. If the confessor merely neglected to impose a penance, or supply for the deficiency of the penitent's confession by questioning him, or failed to correct some mistake that he was laboring under, or to warn him of the obligation of making restitution, he did not thereby sin against justice, and he is not bound to make restitution, unless indeed in the circumstances his silence was equivalent to positive approval. Still, if knowingly and wilfully he did any of these things, he committed sin, and in as far as harm to his penitent or to others ensued he violated charity, which obliges every man to do what he can to prevent loss and damage to others. Even out of confession if he can prevent harm being caused by his failure to do his duty in the confessional, he should with the penitent's leave do his best to prevent it.

CHAPTER XIV

THE SEAL OF CONFESSION

1. By the seal of confession is understood the religious obligation to keep secret anything that is manifested in sacramental confession.

This obligation is imposed by the natural, the divine, and by positive ecclesiastical law. For the very fact that a penitent who makes known his sins in secret to the confessor with a view to obtaining absolution, lays upon the confessor the strictest obligation in justice and in charity not to violate the trust placed in him, much as a doctor or a lawyer when consulted about private matters is bound to observe secrecy with respect to what has been confided to him. Our Lord, who commanded all who fall into grave sin after Baptism to go to confession, could not have imposed such an obligation without requiring confessors to observe the strictest secrecy about what they hear in confession.

The Church, too, in the Fourth Council of Lateran (c. 21) forbids the confessor under grave penalties ever to betray by word, sign, or in any other way, what he has heard in sacramental confession.

The obligation of the seal of confession differs from all other secrets in that it is never lawful under any circumstances to make known the least thing that has been manifested by a penitent in confession. If questioned

about confessional matter, even in a court of justice, the priest must always answer that he knows nothing about it, as with perfect truth he may do, for what he knows as a confessor, he knows as the vicegerent of God, not as man. Not even to save his life or the lives of others may a priest violate the seal; like Fr. Henry Garnett, or St. John of Nepomuk, he must be prepared to lay down his life rather than break the seal. He is never released from his obligation even by the death of the penitent, for people are unwilling that their secret sins should be mentioned even after their death.

A grave sacrilege would be committed by the direct manifestation of the least fault known from sacramental confession, but theologians allow that if the danger of confessional matter becoming known is very remote there may be only venial sin in indirect violation of the seal.

2. The person who hears the sacramental confession of another made with a view to obtaining absolution is primarily bound by the seal. Even if such a person were not a true priest but merely represented himself to be one, he would, nevertheless, be bound by the obligation of the seal, for he could not violate the trust placed in him without such violation injuring the penitent and turning people away from the sacrament.

Not only the priest, but all others, who mediately or immediately come to know anything confessed to a priest with a view to absolution, are bound by the obligation of the seal. Superiors, then, who are asked for faculties to absolve from reserved cases, other confessors whose advice is asked about cases of conscience, any one who by design or by accident overhears what is said in confession, are bound equally with the confessor. The obligation of the

seal is imposed in favor of the penitent; it is the penitent's secret, but he himself is not bound by it. It does not follow, however, that penitents may without let or hindrance talk to others about what the confessor has said or done to them in the confessional. They are at least bound by a natural obligation to reveal nothing which would tend in any way to injure or aggrieve the confessor A confessor may speak with the penitent in the confessional about past confessions in as far as this is necessary for the present guidance and instruction of the penitent; but outside of confession he may not speak of confessional matter even to the penitent without the latter's express leave freely given. There is a question discussed among theologians as to whether one who finds and reads the written confession of another violates the seal or is bound by it. It is better to distinguish various cases. If the circumstances in which the paper is found show that it has been used for the purpose of making a sacramental confession, as when it is found in the confessional, then the written confession is a sort of continuous confession, and knowledge derived from it comes under the seal. The same must be said of a letter written to an ecclesiastical superior for faculties to absolve from a reserved case. Otherwise, inasmuch as the writing down of one's sins is not sacramental confession, knowledge gained from such a source without reference to actual confession does not seem to come under the seal.

Similarly, there is a difficulty about giving or refusing to the penitent an attestation that he has been to confession. If the penitent is unworthy of absolution and has not been absolved, but asks for the confessor's attestation that he has been to confession, what is the latter to do? If the refusal of the attestation would in the circumstances

show that the penitent was not absolved, it is clear that it cannot be refused without a violation of the seal; in other circumstances the confessor will be free to give or refuse it.

3. Not only all sins mentioned in confession are the matter of the seal, but everything which was mentioned because it was thought to be a sin, and every circumstance which was mentioned in order to make a full confession and whose manifestation would tend to injure the penitent or make confession odious, comes under the seal. And so if one who is under a vow of chastity mentions the fact in order to make a full confession of a sin of impurity, the fact that the person is under vow is protected by the seal. In the same way moral and social defects, such as scrupulosity and illegitimacy, come under the seal if they were made known with reference to confession, and if their manifestation would be to the injury of the penitent or make confession odious.

The virtues of a penitent are not the matter of the seal, nor does a confessor seem to violate his obligation if he merely says that he has heard the confession of such a one, unless on account of special circumstances it would cause injury to the penitent or make confession odious. Nor does a confessor whose watch was stolen by a penitent while making his confession break the seal by giving information of the theft to the police.

4. The seal may be broken directly or indirectly. It is broken directly when the confessor says that such a penitent told him such a sin in confession. It is broken indirectly when the confessor says or does anything or abstains from saying or doing anything from which others may come to the knowledge of confessional matter, or by which the penitent may be aggrieved or confession made

odious. A confessor, then, indirectly violates the seal by changing his conduct to the detriment of the penitent in consequence of what he has heard in confession; by saying that a certain sin is rife in a place in which he has heard few confessions; by talking with another confessor about the sins of a penitent of both of them.

It used to be a common view among theologians that ecclesiastical superiors might use knowledge gained in hearing confessions for external government, provided that in such use there was no direct or indirect revelation of confessional matter. After the decree of Clement VIII, May 26, 1593, and that of the Holy Office, November 18, 1682, this opinion has become obsolete, and now it is universally held that no knowledge gained in the confessional can be used by the priest for external government if such use aggrieves the penitent, or makes the sacrament odious, or otherwise directly or indirectly violates the seal.

In spite of the strictness of the seal the confessor may make use of knowledge gained in the confessional to correct his own faults, to treat his penitents and others with more kindness, to learn by experience how better to fulfil his duties as confessor, how to preach more fruitfully, but always with prudence and without giving any just cause of complaint to his penitents.

BOOK VI

EXTREME UNCTION

CHAPTER I

THE NATURE OF EXTREME UNCTION

1. The Council of Trent defined that Extreme Unction is a true sacrament of the New Law insinuated by St. Mark and promulgated and recommended to the faithful by St. James when he wrote: "Is any man sick among you? Let him bring in the priests of the Church, and let them pray over him, anointing him with oil in the name of the Lord: and the prayer of faith shall save the sick man; and the Lord shall raise him up; and if he be in sins they shall be forgiven him." [1]

This sacrament, as the Council of Trent also teaches, is the complement or completion of Penance. As we have seen, Penance was specially instituted for the remission of post-baptismal sin, and its reception is necessary for all Christians who have fallen into grave sin after Baptism. Penance, then, ordinarily precedes Extreme Unction, which is properly a sacrament of the living; its primary effect is to infuse sanctifying grace into the soul for the salvation of the sick man. If any sins still remain on the soul, provided that there be at least attrition for them, they will be remitted together with the remains of sin. By the

[1] James v. 14, 15

remains of sin are understood the temporal punishment due to them, spiritual weakness and inclination to evil, lethargy in the doing of good. The sacrament removes these wholly or in part, according to the dispositions of the recipient, and, moreover, if it be for the good of the sick person and in keeping with the providence of God, it restores him to bodily health. This last effect is not produced by miracle, but by means of natural causes; the sacrament consoles and soothes the sick person, dispels his mental anxieties, and the resultant state, with the blessing of God, sometimes brings about a recovery. In order to produce this effect with more certainty the administration of the sacrament should not be too long deferred.

2. The remote matter of Extreme Unction is olive oil blessed by a bishop. Ecclesiastical law requires that priests obtain the oil of the sick from their own ordinary, not from any other bishop.

The proximate matter is the anointing with oil of the principal organs of the senses, and where the organs are double both are anointed, the right one first. In England, according to the Ritual, the eyes, ears, nostrils, mouth, hands, and feet, are anointed; but when the recipient is a woman in a public infirmary or hospital the priest has a special leave to omit the anointing of the feet if he thinks that it would excite scandal or comment.

NOTE. — In the United States there is no special leave to omit the anointing of the feet when a female is receiving Extreme Unction in a public hospital: nor would there seem to be here any danger of scandal that would excuse from it. There is a legitimate custom, however, in this

country to omit the unction of the loins of males, as appears from the Excerpta of the Roman Ritual published for the United States, and also from Kenrick, Sabetti, and others; but there is no such custom in favor of omitting the unction of the feet, whether of males or females. There may, however, exist a grave reason, *e.g.*, when the feet are enveloped in plaster of Paris or when some serious inconvenience would arise to the patient, which would justify its omission. — END OF NOTE.

If some sense-organ is wanting, the part of the body nearest to where it should be is anointed. Each anointing has its own special form, that for the eyes being: "By this holy anointing and through His most sweet mercy may the Lord forgive whatever sins thou hast committed through thy sight. Amen." The form for the other senses is similar. If the near approach of death will not allow of all the senses being anointed with their appropriate forms, the forehead may be anointed with the following general form: "By this holy anointing may the Lord forgive whatever sins thou hast committed. Amen."[1] As, however, Extreme Unction is only probably valid when administered with such a single anointing under one general form, if there is time it should be repeated immediately in the form prescribed by the Ritual.

[1] S.O. April 25, 1906.

CHAPTER II

THE MINISTER OF EXTREME UNCTION

ONLY a bishop or a priest can validly administer this sacrament, and the only lawful minister is the bishop or priest who has the cure of souls in the place where the sick man dwells, or another priest with his express or at least reasonably presumed leave. If a Religious presumes without the leave of the parish priest to administer this sacrament or the Viaticum to laymen or to clerics, except in a case of necessity, he incurs excommunication reserved to the Holy See by the constitution *Apostolicæ Sedis*.

NOTE. — The reader must not infer from the statement here made that a Religious who administers Extreme Unction or the Viaticum without the leave of the pastor in the United States incurs this excommunication. As there are no parish priests properly so called in this country, the excommunication is not incurred. See Genicot, vol. 2, n. 604; also Sabetti, n. 1002, where he says that except in the province of San Francisco this censure has no application to the United States. That this province does not form an exception, the reader may consult Putzer, *Commentarium in Apostolicas Facultates*, n. 113. Although Religious in the United States are not affected by this censure, it does not follow that they are at liberty to administer either of these two sacraments without leave

of the ordinary or of the priest having pastoral charge of the district. — END OF NOTE.

In the Latin Church one priest performs all the unctions, but the sacrament is valid if different priests perform the several unctions, as is done in the Greek Church. The organs should not merely be touched with the holy oil, but anointed, and the Ritual prescribes that this should be done by making the sign of the cross on the organ with the thumb after dipping it in the oil. Care should be taken not to finish the form before both organs have been anointed when they are double, and the several anointings should be done continuously, as it is probable that all together constitute the sacrament by which grace is not given until the last anointing is finished.

CHAPTER III

THE RECIPIENT OF EXTREME UNCTION

1. In order to be able to receive Extreme Unction validly a man must be baptized, must have attained the use of reason, and must be in probable danger of death from sickness. Extreme Unction, then, may be administered to those adults who are in danger of death from disease, from the pains of childbirth, from a wound, from poison, and from old age, even though they be no longer in their right senses. It can not be validly given to soldiers before going into battle, to criminals who are going to be executed, to imbeciles who have never had the use of reason, to children who have not yet come to the use of reason, or to unbaptized persons.[1]

2. This sacrament may only be given once in the same sickness and in the same danger, but if the sickness be prolonged and after partial recovery the sick person again becomes dangerously ill, Extreme Unction may be repeated. According to some good authors it may be repeated after a month's interval, for as a general rule the danger may be considered a new one after such a period of time.

No good Catholic would wish to depart this life without the help of this and the other sacraments; still there is no obligation under sin to receive Extreme Unction. But although the faithful who, without despising it, neglect

[1] Ritual.

to receive this sacrament do not thereby commit sin, yet a priest who has the cure of souls would sin grievously if he neglected to give those under his charge the opportunity of receiving this sacrament in their last sickness. As soon as there is probable danger of death the last sacraments may be given in the following order: Penance, Viaticum, Extreme Unction, and finally the papal blessing for the moment of death.

BOOK VII

THE SACRAMENT OF ORDERS

CHAPTER I

THE NATURE OF ORDERS

1. THE priesthood of the New Law is not a mere office and bare ministry of preaching the Gospel: Our Lord instituted it and gave it the power of offering the sacrifice of His body and blood and of forgiving sins.[1] This power is conferred on priests by the sacrament of Orders, which also gives the grace to those who are rightly ordained to perform their sacred functions worthily. Those functions are various, and partly by divine institution, partly by ecclesiastical, they have been divided and assigned to separate grades of a spiritual hierarchy. The perfection of the priesthood and the whole of its powers reside in the episcopate; some portion of what bishops possess is communicated to the inferior ranks of the clergy by a special rite for each grade. Thus Orders is one sacrament, but the different ranks of the clergy participate in it in different degrees, or in other words there are several Orders. There are three major or sacred Orders, to which by ecclesiastical law is annexed a solemn vow of chastity, and there are four minor Orders. The sacred Orders are the priesthood, the diaconate, and the subdiaconate; by the minor Orders are ordained acolytes, exorcists, lectors, and doorkeepers.

[1] Trent. sess. xxiii, c. 1.

It is a moot point among theologians whether all these Orders are sacraments or not; more probably only the episcopate, priesthood, and diaconate are sacraments and of immediate divine institution, the rest being of ecclesiastical institution. Those Orders which are sacraments impress a character on the soul.

The first tonsure, by which a lay person is made a cleric, is certainly of ecclesiastical institution and is not a sacrament.

2. The matter of the minor Orders is the handing to the cleric the symbols of the office to which he is ordained, and the words which accompany this act constitute the form. There is a controversy whether the handing to the subdeacon of an empty chalice with the paten alone, or also the giving to him of the book of epistles, is the matter of the subdiaconate, and similarly with regard to the form. It is also a matter of controversy whether the imposition of hands alone is the matter of the diaconate, priesthood, and episcopate, or the handing to the ordinand the symbols of his office, or whether both together constitute the matter. There is the same difference of opinion with regard to the form, but these questions belong to dogmatic theology.

3. In practice, the rite prescribed for ordination in the Pontifical must be observed, and if anything be omitted which even probably belongs to the essence of the sacrament, the whole must be repeated again, at least conditionally. Thus, if in the ordination of a priest the chalice with wine and the paten were not handed to the ordinand to touch while the bishop pronounced the appropriate form of words, the whole ordination would have to be repeated before one thus ordained could be allowed to say Mass. Similarly, if the imposition of hands is omitted which pre-

cedes and accompanies the prayer and preface which are said by the bishop and which contain the form, the whole rite must be repeated. On the contrary, if the third imposition of hands which accompanies the prayer, "Receive the Holy Ghost, etc." is omitted, this portion of the rite alone need be supplied afterward, as it is certain that it only belongs to the integrity of the sacrament, not to its essence.

Although previous reception of the priesthood is more probably necessary for the valid ordination of a bishop, the inferior Orders do not seem necessary for the valid ordination to the priesthood.

Whether three co-consecrators are necessary for the validity of an episcopal consecration is disputed, but at least the Pope can give faculties to have only one consecrating bishop.

The functions of those who are in minor Orders, with the exception of exorcists, may according to modern discipline be exercised by laymen.

CHAPTER II

THE MINISTER OF ORDERS

1. THE ordinary minister of Orders is a bishop, who is the only valid minister of the episcopate and priesthood. A priest may receive delegated authority from the Pope to confer minor Orders, and the subdiaconate, and probably also the diaconate. Thus abbots have power to give minor Orders to their own subjects, and cardinals, if they be priests, may give them to clerics belonging to their titular churches in Rome.

Ecclesiastical law requires that Orders be received only from one's own bishop, or from another bishop with his leave, which is granted by giving the subject dimissorial letters. A person may become the subject of a bishop so as to make him his own and the lawful minister for giving him Orders in five ways:

a. By being born in his diocese not by mere accident, but while his parents had a domicil therein.

b. By acquiring a domicil in the diocese, or by taking up one's abode in the diocese with the intention of always living there for the future. This intention is proved by actually living in the diocese for ten years, or by transferring thither the greater part of one's goods and living there for some time. The intention of always living in the diocese must also be asserted on oath.

c. By having peaceable possession of a benefice in the diocese which is sufficient for one's decent support.

d. By a three years' service of the bishop, who within a month after ordination must confer on the ordinand a benefice sufficient for his decent support.

e. By incardination in the diocese, done in writing after excardination by one's own bishop according to the decrees of the Sacred Congregation of the Council, July 20, 1898, November 24, 1906.

2. By the common law, regulars must be ordained by the bishop in whose diocese their convent is situated, but some have a special privilege, of giving dimissorials to their members for ordination by any bishop who is in union with the Holy See. Whenever a bishop holds an ordination outside his own diocese he requires the leave of the bishop of the place to exercise pontifical functions.

CHAPTER III

THE SUBJECT OF ORDERS

1. To BE able to receive Orders validly, the subject must be of the male sex and baptized. It has always been understood in the Church that women can not receive Christian Orders. Moreover, an adult must have at least an habitual and express intention to receive ordination (unless indeed he is an imbecile and has never had the use of reason).

2. Many qualities and conditions are requisite for the lawful reception of Orders about which something must here be said; the fuller treatment of this matter belongs to canon law.

a. As we saw when treating of the clerical state, one who aspires to Orders must be of good life and must be called by God. Before receiving sacred Orders he must make the spiritual exercises.

b. The ordinand must not be a neophyte or one recently baptized in adult age, nor of evil reputation, nor irregular, nor under censure.

c. Before being made a cleric he must have received the sacrament of Confirmation.

d. He must have been examined by the competent authority as to whether he has the knowledge required for the Orders which he desires to receive. The Council of Trent prescribed that those to be ordained in minor Orders should know Latin; that subdeacons and deacons should

be educated in letters, and should know how to fulfil the duties of their office; that priests should be able to explain the rudiments of the Faith to the people and to administer the sacraments. The First Synod of Westminster (d. 21) requires that those who are to be promoted to the subdiaconate should be examined in one tractate of theology, those to be promoted to the diaconate in two, to the priesthood in three at least, or in the whole of dogmatic theology.

NOTE. — In the United States there is no such law as is here set down for England, requiring an examination in theology previous to the reception of each of the major Orders. — END OF NOTE.

By a decree of the Sacred Congregation of Bishops and Regulars, November 4, 1892, Religious to be ordained must show testimonial letters that besides the regular course of lower studies they have studied theology for one year before the subdiaconate, for two years before the diaconate, and for three before the priesthood.

e. An interval of one year should elapse between minor and sacred Orders, and between each sacred Order, unless for just cause a dispensation is obtained.

f. The lower Orders must be received before the higher, and not before the legitimate age. The subdeacon must have entered on his twenty-second year, the deacon on his twenty-third, the priest on his twenty-fifth.

A bishop must have completed his thirtieth year.

g. By common law sacred Orders should be conferred during Mass on the Saturdays in Ember Week, or before Passion Sunday, or before Easter Sunday. Minor Orders may be conferred on any feast of precept though suppressed.

The bishops in missionary countries and some Religious Orders have the privilege of ordaining outside the assigned times and without observing the intervals. Custom in Great Britain and in the United States favors a wide interpretation of this privilege, so that bishops ordain on any convenient day.

NOTE. — The bishops of the United States have two faculties from the Holy See enabling them to dispense in the canonical age for priesthood. One of these is Article 3, Form I: "*Dispensandi super defectu ætatis unius anni ob operariorum penuriam, ut promoveri possint ad sacerdotium, si alias idonei fuerint.*" The other faculty is Article 3, Form C: "*Dispensandi cum diaconis utriusque cleri super defectu ætatis quatuordecim mensium, ut promoveri possint ad sacerdotium, si alias idonei fuerint.*" These two faculties have reference to priesthood only, not to deaconship or subdeaconship. The second faculty is more extensive than the first, since it is applicable to both branches of the clergy, secular and regular (*utriusque cleri*), while the first regards seculars only, according to a declaration of the Holy Office, April 9, 1727. Besides the first faculty enables the bishops to dispense in one year from the canonical age for priesthood; the other, in one year and two months: the first requires for its exercise an urgent need for priests (*ob operariorum penuriam*), while the second does not require this reason. There is a third faculty still more extensive in respect of the age at which priesthood may be received. Some of our bishops have received Form T in place of C, D, and E, and under Article 1 can confer priesthood when the ordinand is only twenty-two years and six months. "*Dispensandi cum*

quindecim utriusque cleri diaconis suæ jurisdictioni subjectis super defectu ætatis octodecim mensium, ut eo non obstante ad sacrum Presbyteratus ordinem promoveri possint, dummodo idonei sint et nullum aliud eis obstet canonicum impedimentum." From this article it may be seen that the number of deacons who can be promoted to priesthood a year and a half below the canonical age is limited to fifteen; hence when this number is exhausted, a renewal of the faculty is to be sought for. — END OF NOTE.

h. Those who receive sacred Orders must communicate in the Mass of ordination.

k. The Church does not wish her clergy to have to beg or to exercise some unbecoming trade in order to gain a livelihood, so she requires that to be admitted to sacred Orders a cleric must have a title, as it is called, or a certain guarantee of decent support. Various titles are recognized by ecclesiastical law, such as a benefice, pension, patrimony, poverty for Religious, a common table, the Mission, and others. If a cleric already ordained loses the title of his ordination, he may be compelled by the bishop to find another.

l. Before ordination regulars must be solemnly professed unless they have a special privilege by which simple profession suffices.

After ordination a priest pays homage to the bishop and solemnly promises obedience to his ordinary. He undertakes no new burden by this promise; he simply binds himself anew to pay canonical obedience to the bishop in all matters subject to his authority; and a secular priest obliges himself not to leave the diocese for which he was ordained without the leave of his bishop.

NOTE. — It is well to distinguish between the faculty which the bishops of the United States have of conferring Orders *extra tempora* without the observance of the interstices, from the custom by which they may go beyond the limits of this faculty. In Article 1 of Form I is the following: "*Conferendi Ordines extra tempora, et non servatis interstitiis usque ad presbyteratum inclusive, si sacerdotum necessitas ibi fuerit.*" By this faculty the bishops may confer sacred Orders on Sundays, feasts of obligation, or on feasts which were once obligatory, but now abrogated; it does not give authority to confer them outside of those days, as was declared by the S. C. of Rites to the bishop of Montreal (May 18, 1883). However, there exists a custom by which the bishops in the United States may confer minor or major Orders on any day of the year which they deem convenient. The lawfulness of this custom is held by eminent authors, such as Kenrick, tr. xx, n. 34; Sabetti, n. 835; Putzer, n. 99; Tanquerey, *De Ordine,* n. 20; nor does there appear to be any author of note who denies its lawfulness. Being a particular legitimate custom it was not set aside by the S. C. of Rites in the response to the bishop of Montreal, nor has it been abrogated by any subsequent decision of the Holy See.

Regarding the interstices or interval of one year prescribed between acolyteship and subdeaconship, between the latter and deaconship, as well as between deaconship and priesthood, the bishops can dispense for a just cause — *non servatis interstitiis.* This power of dispensation does not enable a bishop to confer two of those orders on the same day; for this a special power would be required, or a legitimate custom which does not seem to exist in this country. — END OF NOTE.

BOOK VIII

MARRIAGE

CHAPTER I

BETROTHAL

1. The seventh sacrament of the Christian Church is Marriage, and because it is usually preceded by an engagement to marry, we will first treat of betrothal. Betrothal may be defined as a mutual promise of future marriage between persons who may marry lawfully.

It is a mutual promise or a bilateral contract between a man and a woman, and the conditions which are required for the validity of any bilateral contract are requisite for betrothal. There must be a serious, voluntary, and deliberate intention to enter into the agreement. Mere unmeaning flirtation, or the expression of a wish by the man that he could make the woman his wife, do not make a betrothal. Anything which destroys the voluntariness of the act will prevent it from being a valid contract. Substantial mistake about its nature or about the identity of the other party to the contract, and probably even mistake about some unessential quality in the other party, if it were the motive for entering into the contract, would make it null and void. As grave and unjustly caused fear is a diriment impediment to marriage, so, too, it prevents a valid engagement to marry.

The promise must be deliberate, made with full knowledge and advertence to the serious step which is being taken. There must be, as divines say, the deliberateness about the act which is necessary to commit a grave sin. The mutual consent of the parties must be expressed by words, writing, or other suitable sign. The acceptance by a woman of a ring from a man who has asked her to be his wife is a sufficient expression of consent and concludes the contract.

For many years past a special law has existed in Spain by virtue of which no betrothal is valid unless attested by a formal document in writing. In the year 1900 this law was extended to the whole of Spanish America, and by the decree of the Sacred Congregation of the Council, August 2, 1907, no betrothal between Catholics or in which one of the parties is a Catholic is valid or has any canonical effects unless it is contracted in writing and is signed by the parties, and also signed either by the parish priest, or by the local ordinary, or at least by two witnesses. If either of the parties or both of them are unable to write, the fact should be noted in the document, and another witness must be added who will sign the document together with the priest, or the local ordinary, or the two witnesses mentioned above. This decree binds all Catholics throughout the world, and takes effect from Easter Sunday, April 19, 1908.

The term *parish priest* in this decree is used to designate not only him who is lawfully placed in charge of a canonically erected parish, but in countries where there are no canonically erected parishes the priest to whom the cure of souls in a definite district is lawfully entrusted, and who is equivalent to a parish priest, and in missions where as yet the districts are not definitely marked out all priests

who in any place have the general cure of souls assigned them by the superior of the mission.

The parties must be capable of entering into a lawful marriage at any rate at the time contemplated when the engagement is made. For a promise to do something which is impossible or unlawful has no binding force, and so if at the time contemplated there will still be some diriment or prohibitory impediment between the parties, an engagement to marry is void.

A valid contract to marry at a future time when the parties will be free to do so may be entered into by those who are now hindered by some impediment. And so children under age, though incapable of marrying, may enter into a valid betrothal. According to the old canon law, even their parents might make a valid engagement for them, if they were present and did not express dissent; or, if absent, afterward ratified the contract. The decree of August 2, 1907, abolishes this rule, as also the presumption of law by which marriage attempted by children under age was presumed to be a valid engagement to marry.

Some authors applied that presumption to the case of clandestine civil marriages contracted in places subject to the decree *Tametsi* of the Council of Trent. They held that although such a marriage was null and void, yet it had the effects of a betrothal, as in the case of those under age. Leo XIII, however, by a decree dated March 17, 1879, decided that a clandestine marriage has not the effects of a betrothal even if the parties intended that it should have.

Betrothal of children under seven is presumed to be invalid for want of the use of reason, but if it is proved that the parties to the contract had sufficient use of reason

in spite of their tender age, the engagement will be valid; malice is then said to supply for the want of age.

2. Betrothal under condition, as, "I will marry you if I can earn £200 a year," is lawful, and follows *per se* the ordinary rules of conditional contracts. Such a betrothal will impose on the party who enters into it an obligation to do what he can to fulfil the condition, and when the condition is fulfilled the engagement will become valid and binding without any renewal of consent. Similarly, an engagement in this form, "I will marry you if I reach the age of twenty-one," will become a binding engagement on attaining that age. On the contrary, an engagement under an impossible condition is null and void from the commencement. And so, if two parties between whom there is a diriment impediment, which either can not be dispensed or for which a dispensation is not usually given, enter into an engagement under the form, "I will marry you if we can get a dispensation," there will be no valid contract. It is much controverted among canonists and divines whether the same is to be said when the impediment is one for which a dispensation can be, and usually is, granted. If cousins, for example, entered into an engagement under the form, "I will marry you if I can get a dispensation," what would be the effect of such an engagement? There would, of course, be an obligation to ask for a dispensation; but if it were got, would there be a valid betrothal by virtue of the conditional engagement, or would the parties have to renew their consent? Many authors maintain that in this case there is no valid betrothal without a renewal of consent. For proof of their view they point out that the parties were not free to enter on an engagement to marry on account of the diriment impediment between them;

that it is unbecoming to contract on condition that the superior grant a dispensation from the law which should be observed by all; and that when the question has been submitted to Rome, the decision has uniformly been in favor of this view. On the other hand, many good authors hold that there is nothing in these reasons to prohibit us from applying to such cases the ordinary doctrine concerning conditional contracts, and so the general question remains undecided and uncertain. Both opinions are theologically probable.

CHAPTER II

THE EFFECTS OF BETROTHAL

1. As BETROTHAL is a contract and the matter is serious the betrothed are under a grave obligation in justice to fulfil their engagement. If a special time was agreed upon, they must keep to the appointed time, otherwise they must marry at a reasonable time after the engagement has been concluded. As grave inconveniences are likely to arise from a too prolonged betrothal, it is the duty of those who have the cure of souls to admonish those engaged that they should marry if without just cause they defer doing so too long. A delay of over a year without good reason seems excessive.

2. After betrothal the parties are under a special obligation to live chastely, and if either commit a sin of impurity with a third person the sin has a special malice on account of his violation of the fidelity which he owes to his betrothed. It is a disputed point whether the circumstance of betrothal changes the species of the sin so that mention of it must be made in confession, or whether it merely aggravates its malice. It is probable that it does not change the species of the sin, for betrothal does not, like marriage, give one party a right in the other, but gives only a right to have the other when the engagement is executed.

3. Betrothal to one prevents valid betrothal to another as long as the former tie lasts, for a promise to do what is

unlawful has no binding force. If, however, in spite of betrothal to one the party marries some one else, the marriage will be valid but illicit, just as the sale of a house to one person is valid in spite of a previous promise to sell it to some one else. Betrothal, in other words, is a prohibitory, not a diriment impediment of marriage with third persons. The Church, however, has made betrothal a diriment impediment of marriage with others related to the betrothed within the first degree of kindred, as with the sister or brother of the betrothed. This impediment has the name of public honesty.

4. The consent of the parents of the parties is certainly not necessary for the validity of marriage. The Council of Trent teaches this.[1] Nor is it necessary *per se* for the lawfulness and the validity of betrothal, because in the choice of a state of life every man is his own master. It does not follow, however, from this doctrine, that children need not consult their parents about marriage and about a partner for life. In a matter of such importance for the future happiness of the child, and because the marriage of a member of the family concerns not merely the individual, but the whole family, and especially the head of it, a dutiful child will ordinarily consult his parents before entering on an engagement to marry. If a child wishes to contract an unsuitable marriage, as if the heir of an honored house wishes to marry an actress of doubtful reputation, the parents have a right to object to such a marriage; and if they forbid it, the son is bound to obey, and he commits sin if he goes against his parents' commands. An engagement contrary to the reasonable commands of one's parents is unlawful and therefore invalid. Mere inequality of rank

[1] Sess. xxiv, c. 1, de ref. Matr.

between the parties of itself is not a sufficient reason why parents should forbid a marriage, but a difficulty arises when inequality of rank will be the cause of dissension and ill feeling in the family. Even in this case a son who wishes to marry some one of inferior rank is not always bound in conscience to submit to the wishes of his parents. If he is satisfied that the woman he loves will make him a good wife, and he is not prepared to take anybody else, he is not bound to sacrifice his own happiness in deference to the wishes of his parents, especially when these originate in social prejudice rather than in a desire for the welfare of their child.

English civil law requires the consent of the father or guardian for the lawfulness of the marriage of a minor. In most of the United States of America the law is similar.

NOTE. — By common law in the United States marriages of those under seven years of age are void, while those over that age are not void; but if the male and female have not reached the age of fourteen and twelve respectively, the marriage is voidable. The statutes of the different States vary in regard to the age for contracting marriage, but in most of them the violation of the law does not make the marriage void, but voidable.

1. In Kentucky, Louisiana, Massachusetts, New Hampshire, Tennessee, and Virginia, the male can marry at fourteen and the female at twelve.

2. In Iowa, North Carolina, Texas, and Utah male and female can marry at sixteen and fourteen respectively.

3. In Alabama, Arkansas, and Georgia the male and female must be seventeen and fourteen respectively; in Kansas, seventeen and fifteen.

4. In California, Minnesota, New Mexico, Oklahoma, Oregon, South Dakota, and Wisconsin eighteen and fifteen respectively for male and female.

5. The male must be eighteen and the female sixteen in Arizona, Delaware, Idaho, Illinois, Indiana, Michigan, Montana, Nebraska, Nevada, Ohio, Porto Rico, West Virginia, and Wyoming.

6. In Colorado, District of Columbia, Maine, Mississippi, Missouri, New Jersey, Vermont, and Washington the male twenty-one and female eighteen.

7. Only in Connecticut, Florida, Pennsylvania, and Rhode Island must each party be twenty-one.

The remaining States differ from any of those mentioned, none exceeding twenty-one for each sex, and none under fourteen and twelve for male and female respectively. If parties want to get married under the age prescribed by statute, in some States they should have the consent of parents or guardian; in others, this is not required for the validity. In a State where such consent is required, the parties under age may go to a State where no such law exists and there get married, the matrimonial laws not being extra-territorial. When there exist State laws prohibiting persons under the prescribed age to get married without consent of parents or guardians, such laws do not make the marriage invalid, but have a penalty annexed to their violation. It may be interesting to note that every State in the Union, except South Carolina, has some statute regulating the age for marriage. — END OF NOTE.

CHAPTER III

DISSOLUTION OF BETROTHAL

1. BETROTHAL, like other contracts, can be dissolved in various ways. The parties may both agree to release each other and then they will be free, for by a rule of law all things are dissolved by the same causes which gave them birth. But although the betrothal thus ceases to exist, yet the impediment of public honesty, which by ecclesiastical law is the consequence of betrothal, does not cease to bind the parties, and so neither can marry a relation of the other within the first degree without a dispensation. If children under age have been betrothed, they can not release the contract even by mutual consent until the age of puberty, and then within three days either may resile from the contract without waiting for the consent of the other party; but if they do not use this privilege granted by canon law they are presumed to ratify the contract.

2. One of the betrothed may resile if a circumstance of importance be detected or happen which if it had been known before would have prevented the contract being entered into. This rule is commonly admitted by divines, who explain it by saying that betrothal is of its nature conditional, and has such a condition as the above annexed to it. If, then, one of the parties finds that the other has an ungovernable temper, or great debts, or is given to drink, or if the other becomes afflicted with a disease like consump-

tion or paralysis, he will be free to rescind the contract. The innocent party may resile if the other commit fornication with some one else, and certainly the man is free if he find out that the woman was corrupted even before betrothal. The same rule may be applied in favor of the woman when she finds out that the man committed fornication before betrothal, at least if in the particular case it is a sign of inconstancy or is very much resented.

Betrothal is annulled if an impediment of marriage come to exist between the parties unless it had its origin in the culpable fraud of one of them, for then he must do what he can to obtain a dispensation or at least compensate the other, as no one should reap advantage from his own fraud.

3. One who is betrothed may resile in order to enter a Religious Order, or to take sacred Orders, or even with a view of living in the world under a perpetual vow of chastity, for in all these cases a higher life is embraced, and betrothal has also the condition annexed, "Unless afterward I am called to a higher life."

4. The Pope may for just cause grant a dispensation from betrothal. Some authors maintained that the Pope had not the power to grant such a dispensation, inasmuch as it would violate the rights of the other party. However, if an individual is unreasonably obstinate in the maintenance of his rights, the head of the society to which he belongs should have the power of granting relief to others whom that obstinacy places in difficulties. This is what the Pope sometimes does; when a civil marriage contracted in violation of betrothal to another, though null and void in the eyes of the Church, makes it impossible for the married party to return to his former betrothed, the Pope will

grant a dispensation even if the other party refuses to forego his rights.

5. When one of the parties labors under a secret defect which if known would furnish sufficient ground for resiling from the engagement, there is no strict obligation to make it known to the other party, unless it will be to his detriment. Past sin, then, need not be declared, but if the woman has undergone an operation which makes her incapable of bearing children, she should not contract marriage with a man who is ignorant of the defect and hopes to have children.

Whether marriage with a woman contracted in violation of a promise of marriage made to another annuls the former betrothal altogether, or whether the obligation to marry the first is only suspended and revives again if the wife die before the husband, is a disputed question among divines. Of course, such a breach of faith makes the other party free to marry some one else if she choose, and the opinion is at least probable that by such a radical change in circumstances as marriage with another the former engagement is altogether dissolved and can not revive. There is something incongruous in the idea of a person who is married to one, being nevertheless still under the obligation to marry some one else.

6. If a man after betrothal without the knowledge or consent of his betrothed goes to live elsewhere at a distance so that personal intercourse between them is impossible, the woman may consider herself free to break off the engagement. A short absence makes no difference in the mutual obligations of the parties. If it is uncertain with what intention and for how long a time a betrothed person has absented himself, information as to his intentions should be sought by letter before breaking off the

engagement. If a time was fixed for the marriage, the obligation is not extinguished by failure to keep to the time, unless it is certain that the intention of the parties was to break off the engagement if the marriage were not contracted at the appointed time. Presents made to the betrothed in view of marriage are forfeited if the engagement is broken off through the fault of him who made the presents, otherwise, if the fault is on the other side.

If it is certain that there is good cause for breaking off an engagement, this may be done by private authority; it will only be necessary to have recourse to the ecclesiastical judge when the cause is doubtful, or when scandal would arise if the engagement were broken off by private authority on account of the cause being unknown.

7. People who are only engaged to be married have not the rights of married people, and if they attempt to use them they are guilty of sin against the sixth commandment. It is, however, as a rule morally necessary for them to become acquainted with each other, and they are justified in showing to each other those marks of affection which are not wrong in themselves and which are usual in the circumstances. It is to be desired that they should not be much together alone, especially at night, and if they are left alone they should not show greater familiarity toward each other than they do when a mother or sister is with them.

CHAPTER IV

BANNS OF MARRIAGE

1. BEFORE publishing the banns of marriage the priest who has the cure of souls must have at least a general knowledge of those who wish to marry. The Ritual prescribes that he should inquire whether there is between them any impediment of kindred or affinity, or any other; whether they wish to marry freely and of their own accord; whether they be of age, and know the rudiments of the Faith so as to be able to teach it to their children.

With regard to people with no fixed abode, strangers, the wives of soldiers, sailors, and others, who are said to have died in foreign parts, the Ritual admonishes the priest not to admit them readily to marriage before making all needful inquiries about them, and referring their case to the bishop, so as to have his leave for the marriage.

2. If no impediment has been discovered by examining the parties, the priest publishes the banns in accordance with the decree of the Council of Trent.[1] "It ordains that for the future before a marriage is contracted the proper parish priest of the contracting parties shall three times announce publicly in the Church, during the solemnization of Mass, on three continuous festival days, between whom marriage is to be celebrated; after which publication of banns, if there be no lawful impediment opposed,

[1] Sess. xxiv, c. 1, de ref. Matr.

the marriage shall be proceeded with, in the face of the Church."

The reasons for this law are: the avoidance of clandestine marriages, so that it being known who are married, there may be less danger of bigamous marriages; the discovery of impediments of marriage; and the protection of the rights of others arising from former betrothal. The banns must be published by the parish priest in the Church of the parish or district where the parties have their domicil or quasi-domicil. If they live in different parishes, the banns must be published in both; and if either or both have recently, within six months, come from another district, the banns must be published there as well. They must be published during the principal Mass on three successive days of obligation; but if by mistake the publication has been omitted at Mass, the omission may be made good in the evening, if there be a considerable concourse of people at the evening service.

3. The very form which is commonly made use of in publishing banns shows that by them the Church intends to impose a serious obligation on all who know of any impediment between the parties who wish to marry to communicate their knowledge to the parish priest. This precept of the Church will bind even when the impediment is matter of a natural or promised secret, for such a secret can not avail against the just commands of a superior. A professional secret binds more strictly, but it does not excuse one who knows it from doing what he can without betraying the secret to procure the removal of the impediment.

4. The obligation of publishing the banns is a serious one, but for good reason the bishop or his vicar-general

may dispense with them either wholly or in part. According to approved theologians, the bishop is even obliged sometimes to dispense with banns, when charity toward his flock requires it. Thus a dispensation should be given when it is probable that otherwise the marriage will be maliciously prevented, when it is a necessary means to preserve the reputation of the parties who are thought to be man and wife already, and when the parties are obliged to depart at once to foreign countries. For lighter reasons the bishop may dispense, but he is not obliged to do so.

A parish priest has no jurisdiction in the external forum, and so he cannot dispense of his own authority from banns. In some special case, however, it might be necessary to marry the parties without delay, and then if there were no time to have recourse to the bishop, a simple priest might declare that under the circumstances the law with regard to banns ceased to be of obligation.

This principle that, when positive law not only ceases to promote the common good but is actually adverse to it, then it no longer binds in the particular case, may sometimes be applied, according to many theologians, even to such impediments of marriage as have their origin in positive law. It might happen that everything was ready for the marriage, that the parties with their friends were already in the church, and then for the first time, whether from confession or in other ways, the priest became aware of a secret and diriment impediment to the marriage of the parties. If the parties know nothing of the impediment, the best way out of the difficulty would be for the priest to say nothing about it, proceed with the ceremony, and afterward apply for a dispensation,

which when obtained he will execute in the manner to be described below. It is probable that in such a case the impediment ceases to bind, but for greater security a dispensation should be asked for and executed. If one of the parties knows of the impediment, but it can not be made known without injury to his reputation, he might be instructed to give his consent in the marriage conditionally on getting a dispensation, which should then be obtained as soon as possible. If the impediment were of its nature public, like that of kindred, and no harm would follow from its being known besides the delay in the marriage, the priest should openly say why the marriage must be put off for a time in order to obtain the necessary dispensation.

The Ritual prescribes that the parties should be diligently instructed how they should live in a pious and Christian way in the state of wedlock. This is done partly in the confessional, partly outside. The parish priest may make a brief discourse to them at the end of the ceremony, or if he prefer he may read to them the instruction which is inserted in the Ritual for the purpose.

CHAPTER V

THE MARRIAGE CONTRACT

1. MARRIAGE may be defined as a contract between a man and a woman by which they give each other the right to exercise the acts requisite for the procreation of children, and bind themselves to live indissolubly together. Living in accordance with this contract constitutes the state of marriage.

The primary end of marriage is the procreation of children for the preservation and increase of the race; besides this there are also the secondary ends of mutual society and help, and a lawful outlet for concupiscence. The Fathers and councils mention a threefold good in marriage: that of children, that of mutual fidelity, and that of the sacrament, or an indissoluble and holy union, typified by the union between Christ and His Spouse the Church.

It is the teaching of the Church, defined by the Council of Trent, that marriage between baptized Christians is a sacrament, and so Christ our Lord though he did not institute marriage, yet raised it to the dignity of a sacrament of the New Law, causing the marriage contract to be productive of grace *ex opere operato* whenever it is worthily entered into by baptized Christians. Between these the contract is the sacrament, there is no real distinction between them, and among Christians a marriage can not be valid without being also a sacrament.

2. There are certain technical terms used by theologians to designate different kinds of marriage, and it will be well to give them here.

A valid marriage between non-baptized persons is called *legitimate;* when it is perfected by the use of marital rights it becomes *consummated;* a valid marriage between Christians not yet consummated is said to be a *ratified* marriage.

A *true* marriage is one that has been validly contracted and which can be proved by suitable arguments; a *presumptive* marriage is one presumed by law; a *putative* marriage is one thought to have been validly contracted, but which is really invalid on account of some hidden diriment impediment.

A *canonical* marriage is one celebrated according to the laws of the Church; a *civil* marriage is contracted according to the laws of the State; a *secret* marriage, or a marriage of conscience, is one celebrated without banns by the bishop's leave before the parish priest and witnesses who are bound to secrecy; a *morganatic* marriage is contracted by a person of rank with one of inferior position in life on condition that she and her children are excluded from the rank of the father.

3. Marriage is rooted in human nature; it was instituted by God and raised by Our Lord to the dignity of a Christian sacrament; and so of course it is honorable and its use is lawful. The marital rights, or the *debt* as St. Paul calls it,[1] is the matter of the matrimonial contract, and therefore the right to use marriage is of its essence, and without it marriage can not exist. However, marriage does not necessarily imply the exercise of the

[1] 1 Cor. vii. 3.

right which it gives, any more than the ownership of a house implies the use of it. Our Lady and St. Joseph were really married though Our Lady always remained a virgin.

Although marriage is lawful and honorable, yet all are not commanded to marry. A man may remain a bachelor if he please, and many women remain single without their having the option of being married. The Church, following St. Paul, teaches that the state of celibacy, or virginity, voluntarily chosen in order to render a more whole-hearted service to God, is more perfect than the state of marriage. Our Lord Himself said that there are some who refrain from marriage for the sake of the Kingdom of Heaven, and He added, "He that can take, let him take it." At the same time He said, "All men take not this word, but they to whom it is given."[1] And certainly for some who are strongly inclined by nature to the pleasures of the flesh, or who have fostered their passions by indulgence, the word of St. Paul remains true, "It is better to marry than to be burnt."

4. The efficient cause of marriage, as of all contracts, is the consent of the parties expressed outwardly by sensible signs. That consent must be mutual, referring to the present, not to the future; it must be deliberate and voluntary, and expressed by suitable signs; not only because it is a bilateral contract but also because it is a sacrament, which is essentially an outward sign of invisible grace.

For the validity of the contract any suitable signs by word, or writing, or nods, would suffice. The contract is valid when entered into by proxy, by letter, or by other

[1] Matt. xix. 11.

means of communication between the absent. Ordinarily, for the lawful celebration of marriage the parties must be present with each other, and all must be done in accordance with what is laid down in the Ritual.

Any one, who having entered into the contract of marriage afterward asserted that he had only feigned consent, would not be listened to in the external forum. In the forum of conscience he should be told that he must give a real and internal consent, as that is practically the only way to repair the injury which by his fraud he has inflicted on the other party. If such a case occurred, it would not be necessary to go through the form of marriage again; all that would be required would be for the defaulting party to make good the expression of his consent.

5. Marriage should be contracted absolutely, but if in any particular case it is contracted under condition, we must distinguish various cases to see how the condition will affect its validity.

a. A marriage contracted under a condition which has reference to the past or to the present and is verified, as, "I agree to marry you if you are a maid," is valid, but it will not be lawful to use marital rights until it is known whether the condition is verified or not. If the condition is not verified, the contract is invalid.

b. An explicit condition against the essence of marriage which has reference to the future makes it null and void for want of true consent to marriage. Thus the conditions, "I marry you if you agree to have no offspring," or, "Until I find a more suitable partner," or, "If you will sell yourself for money," make the marriage null and void; for such conditions destroy the perpetual

and exclusive right, the transference of which is of the essence of the contract of marriage.

c. If nothing against the substance of marriage is expressed in the contract, but one or both of the parties intends to do something which is against the essence of marriage, such an intention will vitiate the contract or not, according as it excludes marital rights or only implies a determination to abuse them. Thus if a man intended to have two wives on a footing of perfect equality, he would be married to neither of them; but if he intended really to be married to one and was also bent on keeping a concubine, his marriage with the first would be valid. Similarly, if two were to marry with the intention of living together in virginity, the marriage would be null and void if there was no transference of marital rights; if their intention excluded only the use of marital rights, the marriage would be valid.

The validity of marriage contracted with mutually opposed intentions will depend on which is predominant, or on which would be chosen if their mutually destructive character were known and realized. And so if a baptized person wants to be married but does not want the sacrament of matrimony, he will be married if that is the predominant intention; he will not be married if the intention to exclude the sacrament is predominant.

CHAPTER VI

THE MINISTER, MATTER, AND FORM OF MATRIMONY

1. WE HAVE seen that according to the teaching of the Church the contract of marriage was raised by Our Lord to the dignity of a sacrament, so that the marriage contract constitutes the sacrament, and as such confers grace on baptized and worthy recipients to enable them to perform the duties of their state of life like true Christians. The efficient cause of the contract is the mutual consent of the parties, who thereby confect the sacrament, and who are, therefore, its ministers to each other. The remote matter would seem to be the marital rights which are the matter of the contract; the proximate matter is the mutual offer, and the form the mutual acceptance of those rights. It is uncertain whether a Christian who by dispensation marries a non-baptized person receives the sacrament or not, as the other party is certainly incapable of receiving a sacrament. It is also disputed whether the marriage of unbaptized persons who are converted to the Faith becomes a sacrament on the reception of Baptism.

2. The civil authority probably has power over the marriages of non-baptized subjects, so that it can make diriment and prohibitory impediments to such marriages for the common good. Christian marriage is a sacrament, and the administration of the sacraments belongs exclusively to the Church, so that the State has no power

to make diriment or prohibitory impediments for Christian marriage. The regulations which the civil authority makes concerning marriages of soldiers and others should, of course, be observed if they are reasonable and just, but they are not impediments in the strict sense. There is nothing to prevent the State from making laws concerning the civil effects of marriage, such as the property rights of married people, rights of inheritance and succession, titles of nobility, and similar matters; these things are within the competence of the State. But questions which affect the bond of marriage, and the capacity of parties to contract marriage, belong exclusively to the Church, and so laws of divorce made by the civil authority are of no validity in the forum of conscience, except in so far as they sanction and apply the laws of the Church.

3. Marriage is a sacrament of the living, and should be received in the state of grace. The priest should endeavor to get the parties to go to confession and communion when they are married, so that they may enter on their new state of life with the blessing of God. The rite in Catholic marriages should be performed in the Church, and if the wife has not received the nuptial blessing before it is the wish of the Church that, whenever the rubrics permit, the Mass *Pro Sponso et Sponsa* should be said, and the nuptial blessing given as therein laid down. This Mass may be said on all days outside close time except on feasts of the first and second class, and on days of obligation. On these days, however, a commemoration may be made of the Mass *Pro Sponso et Sponsa* and the prayers after the *Pater* and communion may be added.

Although the common law of the Church prescribes that the nuptial blessing shall not be given out of Mass, in

England we may follow our Ritual, which says that it should not be omitted even if Mass is not said, until this privilege is specially revoked by competent authority.

NOTE. — From the rubrics of the Roman Ritual and from several decrees of the S. C. of Rites, it is manifest that the nuptial blessing is not to be given except during Mass. Thus that Congregation declared (June 23, 1853), "*Benedictionem nuptialem juxta rubricas non esse impertiendam nisi in Missa.*" Still more recently (June 30, 1896) the same prohibition was repeated. (See Decreta Authentica, n. 3922.) However, an apostolic indult has sometimes been granted, allowing the nuptial blessing to be given outside of Mass. The province of Quebec received this faculty in 1865, and according to our author England possesses a similar privilege. In the United States there is no such indult or legitimate custom.

A question has been proposed, whether there is a strict obligation in the United States of imparting the nuptial blessing (when the rubrics permit) and therefore of having Mass celebrated on the occasion. Some authors hold the strict obligation, though not *sub gravi*. Tanquerey (*De Matrimonio*, n. 47) says: "*Juxta communem sententiam, Missa cum benedictione nuptiali de præcepto est, non de mero consilio, nisi rationabilis causa excusat. Probabilius tamen non obligat sub mortali, ut recte docet St. Alphonsus* (n. 988)." It is difficult at present to hold any obligation of this sort, either *sub gravi* or *sub veniali*. The S. C. of Rites issued a general decree on votive masses (June 30, 1896), declaring: "*Benedictio enim nuptiarum in missali posita, si sponsi eam petierint, (ceterum ad eam non adigendi, bene tamen adhortandi) ab ipsa Missa*

pro Sponso et Sponsa abstrahi nunquam potest, sed infra eam omnino debet fieri." (Cf. Decr. Auth. de Missa pro Sponsis, n. 3922.) From the parenthetical clause of the decree it is clear that parties are not to be compelled on the occasion of their marriage to have Mass along with the nuptial blessing. The Fathers of the Third Plenary Council of Baltimore (n. 125) are indeed very strong and rightly so in urging the pastors to inculcate the practice of having Mass and the nuptial blessing. "*Frequenter et gravibus verbis inculcent pium illum et laudabilem Ecclesiæ ritum, quo fideles non noctu sed Missæ tempore cum benedictione nuptiali contrahant. Qua ratione fidem suam Catholicam tacite profitentur et coram omnibus ostendunt quam alte, ut decet, ac splendide de Matrimonii dignitate ac sanctitate sentiant. Et hoc quidem non solum laude dignum sed fere necessarium videtur nostris hisce temporibus quando nihil intentatum relinquunt religionis hostes, ut matrimonio omnis sanctitatis, omnis sacramenti species, si fieri potest, adimetur et quasi merus contractus civilis æstimetur.* — END OF NOTE.

In England the State does not acknowledge Catholic marriages unless they are celebrated in presence of a registrar and in a building registered for marriages. A priest who solemnized marriage otherwise would be liable to severe punishment as a felon. Due notice of a marriage must also be given to the superintendent registrar of the district or districts in which the parties reside. The marriage can not take place without the registrar's certificate, which can not be granted before the expiration of twenty-one days after the notice has been entered, if the marriage is to be without *license*, or of one day if it is

to be with *license*. These and other laws which the civil authority has imposed on Catholic marriages should be observed in order that the marriages of Catholics may be recognized by the law of the land, and to avoid greater evil. The Nonconformist Marriage Act of 1899 enabled Nonconformists to dispense with the presence of the registrar, but its onerous conditions prevented the Catholic bishops from accepting it.

CHAPTER VII

THE PROPERTIES OF MARRIAGE

1. UNITY and indissolubility are the properties or peculiar qualities of marriage which we have to discuss in this chapter. Its unity consists in its being a contract in which the parties are necessarily one man and one woman. If several men have one and the same wife at the same time, we have polyandry,. which is contrary to the law of nature, for it prevents the natural increase of the human race, makes domestic life almost impossible, and on account of the uncertainty of paternity renders the proper education of the children who are born very difficult. If one man has several wives at the same time, there is polygamy, which is certainly less in keeping with man's nature than monogamy. Polygamy degrades woman, destroys that equality which in regard to marriage rights should exist between the sexes, and makes it difficult for peace and harmony to reign in the family. It is certainly against the positive divine law, promulgated anew by Christ our Lord, and obligatory on all men after the preaching of the Gospel. The Council of Trent anathematized him who should say that it is lawful for Christians to have several wives and that this is not forbidden by divine law.[1]

2. Marriage is also indissoluble, at least by divine law, so that no human power can dissolve a marriage once

[1] Sess. xxiv, c. 2.

validly contracted; "What God hath joined together let no man put asunder."[1] This text has the strictest application to the consummated marriage of baptized Christians which can only be dissolved by divine authority. The Pope can for a grave reason dispense in the ratified but not consummated marriage of a Christian; ratified marriage is also dissolved by religious profession of solemn vows; and there is the case of the Pauline privilege.

a. The Pope not unfrequently uses the power given to him by Our Lord to dissolve the merely ratified marriage of Catholics for some grave reason. A probable suspicion of impotence in one of the parties, and a serious quarrel which leaves no hope of reconciliation, have been held sufficient causes for granting a dispensation from a ratified marriage. As the Pope has no jurisdiction over non-baptized persons, he can not exercise his authority to dissolve their marriages. But if a non-baptized married couple were converted to the Faith, the Pope would have power to dissolve their marriage if it had not been consummated after Baptism, for even if it had been consummated before Baptism it would only rank as a ratified marriage. By authority of the Holy See a baptized pagan who had several wives is sometimes permitted to keep any one of them who may be converted with him, if the first is unwilling to become a Christian. Similarly, a married pagan converted in circumstances which render it impossible to interpellate the other party is sometimes allowed by Papal dispensation to contract another marriage with a Catholic.

b. Solemn profession in a Religious Order with solemn vows annuls a previously existing ratified marriage by

[1] Matt. xix. 6.

ecclesiastical law. Mere entrance into religion and even profession of simple vows in Orders that have solemn vows is not sufficient. By ecclesiastical law a period of two months is granted after marriage, during which there is no obligation to render the debt, in order that either of the parties may use his privilege of entering religion.

c. The consummated marriage of two pagans may be dissolved by the Pauline privilege if one of them is converted to the Faith, and the other will neither be converted nor live at peace without trying to draw the convert to sin. It is in this sense that the Church interprets the words of St. Paul: "But if the unbeliever depart, let him depart. For a brother or sister is not under servitude in such cases. But God hath called us in peace." [1]

The marriage is not dissolved by the Baptism of one of the parties, but if the conditions mentioned above are verified the convert after Baptism may contract a second marriage with a Christian, and by this marriage the former is dissolved. In order that it may be known whether the other party is willing to be converted or at least to live at peace with the convert, he must be interpellated by the bishop or by his authority. Both interpellations are required, and more probably they are necessary for the validity of the second marriage, unless a dispensation from them is obtained from the Holy See. Thus in a case of insanity of the other party, a dispensation from the interpellations was granted, and in countries where Christians were forbidden to live with Jews, only one interpellation was put, "Whether the other party was willing to be converted to the Faith," and if a negative answer was given, the convert was free to marry again.

[1] 1 Cor. vii. 15.

3. Although the marriage bond is in general indissoluble according to Catholic teaching, yet for good cause married people may separate either perpetually or at any rate for a time. They may do this by mutual consent if there is no danger of incontinence, in order to lead a more perfect life in religion or sacred Orders; and for a time for less serious reasons, as for the sake of trade or travel. Serious danger to body or soul from brutal violence or infectious disease like syphilis, or from heresy or apostasy committed after marriage, is sufficient to justify separation as long as the danger lasts. Finally, the innocent party may separate from the other on account of adultery, perfect, consummated, and not condoned explicitly or implicitly by rendering marital rights after knowledge of the crime. Our Lord Himself permits separation for this breach of the marriage compact, and if the crime is certain and notorious the separation may be effected by private authority. In case of doubt or when there is danger of scandal because the adultery is secret, the authority of the ecclesiastical judge should be invoked. Separation is allowed to the innocent party; it is not of obligation, and as a rule the confessor will do well to try his best to bring about forgiveness and reconciliation. If both parties commit adultery, there is mutual compensation and neither has the right to separate from the other.

4. Although questions concerning divorce and the separation of married people belong of right to the ecclesiastical court, in most modern States the civil authority claims and exercises jurisdiction in these matters. May Catholics take their marriage cases to the civil courts, and may Catholic judges and Catholic lawyers lend their aid in deciding them? No answer can be given to these

questions which will apply to all countries and circumstances. In some countries Catholics can still have their rights safeguarded by recurring to the ecclesiastical courts, and there is no reason why they should carry their matrimonial suits to the civil tribunals. In England and in the United States the Church tacitly or explicitly permits Catholics to apply to the civil courts at least for a judicial separation. Before doing so they should put their case before the ecclesiastical authorities, and this is prescribed under liability to penalties by the Third Plenary Council of Baltimore.[1]

NOTE. — The portion of the decree here referred to is as follows: "*Iis omnibus, qui matrimonio conjuncti sunt, præcipimus, ne inconsulta auctoritate ecclesiastica, tribunalia civilia adeant ad obtinendam separationem a thoro et mensa. Quod si quis attentaverit, sciat se gravem reatum incurrere et pro Episcopi judicio puniendum esse.*" What is precisely meant by the clause, *inconsulta auctoritate ecclesiastica*, is not quite evident. Does it signify that before suing for a judicial separation in the civil court a person is required to consult the bishop or would he sufficiently comply with the tenor of this clause by consulting his own pastor? It is certain that pastors have not, strictly speaking, from their office any authority *in foro externo* regarding matrimonial cases, these being reserved to the ordinary; and therefore it might seem insufficient to refer such a question to the pastor alone. On the other hand, a bishop might delegate a pastor as judge of the sufficiency of cause of a parishioner for seeking a separation, so that the latter after receiving a favorable

[1] n. 126; S.O. December 19, 1860.

opinion might licitly apply to the divorce court. Perhaps it may be held that the ecclesiastical authority required to be consulted according to the decree was not intended to be confined to the bishop or to a priest specially delegated by him, but may be understood of any pastor or assistant regarding his parishioners without any special delegation by the bishop. It would appear that the term *ecclesiastical authority*, may fairly be interpreted in the wider sense, so long as the bishop does not reserve to himself the power of giving permission to apply to the divorce court. Practically a priest, pastor, or assistant is justified in following the recognized usage of his diocese in this matter, since such usage implies episcopal sanction. The writer of this note once had occasion to refer to the bishop a person who for good reason wanted to procure a legal separation from her husband. It was the opinion of the bishop expressed on that occasion that the priest could have given the permission without reference to the ordinary. To-day, when the number of divorce suits is largely on the increase, it would be difficult for the bishop to judge personally or through his matrimonial court all the cases of the kind which might be presented. Hence perhaps many of the bishops are content, as in the instance given, to leave the decision to the pastor or assistant.—END OF NOTE.

With regard to divorce cases, Catholics in England and in the United States may have recourse to the civil courts in order to obtain a declaration of nullity when a marriage has already been declared invalid or annulled by the ecclesiastical authorities. They may not go to the civil courts in order to obtain dissolution of

a valid marriage with the intention of marrying again. This is obvious from what has been said above. There is a difficulty as to whether a Catholic may petition for a divorce in the civil courts, not with the intention of considering the marriage dissolved and marrying again, but in order to obtain the civil advantages annexed to divorce, such as a change of marriage settlements or release from the obligation of supporting his wife's child by another man. The question is disputed among theologians, but as the law in English-speaking countries does not express hostility to religion and does not affect to touch the conscience but only the external relations of the citizens, the better opinion is that Catholics for good cause may petition even for divorce in the civil courts, with the intention of using only the civil advantages that follow from it. A consequence of this is that Catholic lawyers and judges may for grave reasons undertake these cases in the civil courts. For greater safety and to show their submission to the Church they should ask the leave of the bishop.

CHAPTER VIII

THE IMPEDIMENTS OF MARRIAGE IN GENERAL

1. THE impediments of marriage are certain conditions or circumstances which prevent marriage between the persons whom they affect. Some have their origin in natural and divine law, as the impediment of previous marriage, which as long as it lasts prevents a second marriage; others have their origin in ecclesiastical law, like that of public decency. Some prevent marriage being lawfully contracted and are called prohibitory, though a marriage contracted in spite of them is valid; others are diriment impediments and where they exist prevent marriage being validly contracted; but if they arise after marriage has already been contracted they can not make it null and void.

Diriment impediments are, in general, annulling laws which for the common good make the parties affected incapable of contracting a valid marriage, and render the act null and void if marriage is attempted in spite of them. Such laws remain in force in spite of ignorance or fear, and so as a general rule a marriage contracted in ignorance of a diriment impediment which exists between the parties is null and void in spite of the ignorance. In the same way private inconvenience does not make a diriment impediment cease to bind, but if the law can not be observed without causing public harm and inconvenience, then it

ceases to be of obligation. Thus, if illness prevents one of the parties from going to be married in the Church on the day appointed, he is not justified in contracting marriage privately at home; but if all the priests of a country are driven out, as were those of France in the Revolution, marriage may be contracted without the presence of the parish priest.

2. The impediments of natural and divine law bind all men, whether infidels or Christians, and so a marriage between parent and child is always and everywhere null and void. The civil authority more probably has power to make impediments of marriage which will bind its non-baptized subjects, but the Church alone has power to make impediments for Christians who have been baptized.[1] All baptized persons, whether Catholics or heretics or schismatics, are subject to the diriment impediments of marriage unless they have been specially exempted from them. For all who are baptized thereby become members of the Church of Christ and subject to the jurisdiction of the divinely constituted head of that Church. The Supreme Pontiff, then, has power to bind all who are baptized by those impediments of marriage which are of ecclesiastical origin. Neither the practice of Rome nor the express declarations of the Popes afford any ground for the opinion that it is not the Church's intention to bind heretics and schismatics by the diriment impediments of marriage. Especially since the time of Benedict XIV many cases have been decided of marriage contracted between non-Catholics being declared null and void on account of some impediment of ecclesiastical origin. The general principle is clearly stated in the answer of the Sacred Congregation of

[1] Leo XIII Encyc. *Arcanum*, February 10, 1880.

the Council to the bishop of Rosenau, August 20, 1780. "But, you say, because heretics in Hungary marry among themselves even within the prohibited degrees in virtue only of royal permission, I may well be asked what is to be said about the validity of such marriages. The answer is that unless a lawful dispensation of the Church by whose authority those impediments were introduced is obtained for them, the declaration of Benedict XIV clearly decides that those marriages are invalid. For it lays down that in Holland marriages between heretics are to be held as valid, even though the form prescribed by the Council of Trent was not observed in solemnizing them, provided that no other canonical impediment stood in the way; and this exception shows clearly that if there be any other canonical impediment, such as exists within the forbidden degrees of kindred, those marriages are not valid."

According to the common opinion, then, marriages contracted by baptized heretics and schismatics, when there is a diriment impediment of ecclesiastical origin between the parties, are invalid, though the impediment may not be recognized in the sect to which they belong. Such marriages, however, inasmuch as they are contracted in good faith, are putative, and the children are legitimate.

CHAPTER IX

THE PROHIBITORY IMPEDIMENTS

THERE are four prohibitory impediments of marriage according to modern ecclesiastical law: the prohibition of the Church, close time, betrothal, and simple vows. Something must be said on each of these.

1. The impediment called the Church's prohibition is either special or general. A special prohibition of marriage is issued by the parish priest, or the bishop, or the Pope, when it has been found out that the proposed marriage will violate the rights of a third party, or when a well-founded suspicion arises that there is some impediment between the parties. By a general prohibition is understood a law of the Church which forbids marriage in the circumstances but does not make it null and void if in spite of the prohibition it is contracted. Thus the Church forbids marriage without banns; it forbids clandestine and mixed marriages. We have already treated of the law concerning banns, and it will be more convenient to treat of mixed marriages under the diriment impediment of disparity of worship. Clandestinity, or marriage without the presence of the parish priest and witnesses, is also a diriment impediment, to be treated of below, in places where the decree *Tametsi* of the Council of Trent has been published. In Great Britain and in the greater part of the United States of America the decree *Tametsi* was never published, but

clandestinity is now a diriment impediment of marriage in Great Britain and in the United States, as well as throughout the Western Church, by virtue of the decree *Ne temere*, August 2, 1907.

2. During close time, or the periods between the first Sunday of Advent and the Epiphany, and from Ash Wednesday to Low Sunday, the solemnization of marriage is forbidden by the common law of the Church. The solemnization of marriage consists especially of the Mass *Pro Sponso et Sponsa*, the nuptial blessing, and outward pomp and feasting in connection with the marriage. A simple and private marriage without these solemnities during close time is not against the common law, but in many dioceses even such a marriage is forbidden by custom or diocesan law without leave of the bishop.

3. Betrothal between two persons prevents the parties from lawfully marrying any third party unless the betrothal is legitimately broken off. In other words, betrothal is a prohibitory impediment of marriage with any other person than the betrothed, as we saw above.

4. There are several simple vows which are so many prohibitory impediments of marriage.

A vow of chastity hinders marriage, for he who has taken such a vow exposes himself to the danger of violating it if he marries, or of depriving the other party of his marital rights. Even after marriage has been contracted the obligation of the vow remains, unless a dispensation is obtained or the obligation of the vow is indirectly annulled by the other party.

By a vow of virginity he who takes the vow promises God that he will not commit a consummated sin against chastity. He will sin, therefore, by marrying, because he

exposes himself to the danger of breaking his vow or of defrauding the other party of his rights. If by a consummated sin against chastity his virginity has been destroyed, the vow can no longer be observed, and ceases.

The same rules hold with regard to a vow of celibacy which is violated by marriage, but after marriage has been contracted no further obligation remains.

Chastity, virginity, and celibacy are loosely used one for the other, and if a case arose in the confessional the intention of the penitent would have to be inquired into in order to discover what obligation he wished to take upon himself by his vow.

One who has vowed to receive sacred Orders would commit sin by marrying, for by marriage the other party obtains rights which are incompatible with the observance of the vow. He is bound to ask the other party's leave to receive Orders, and if it is refused he may use his marriage rights. The obligation of the vow will then ordinarily cease as being impossible of fulfilment, though *per se* it is only suspended, and revives on the death of the other party, or in case of his loss of marital rights.

Similarly, one who has taken a vow to enter religion commits sin by marrying, as he makes the observance of his vow difficult or impossible. Before consummating marriage he is still bound by his vow if it bound him to enter a Religious Order in the strict sense. After marriage has been consummated he may use his marital rights, and the vow usually ceases on account of impossibility of observance.

5. The power of dispensing from the impediments of clandestinity, solemnization of marriage during close time,

the vow of entering religion with solemn vows, and the proof of *liber status* when it is not altogether certain, is reserved to the Holy See. By the common law a dispensation from the impediment arising from a vow of perpetual and perfect chastity, and from mixed marriage, can only be obtained from the Holy See, but in England and in the United States the bishops have authority to dispense from both by virtue of special faculties.

Bishops can also dispense in banns, and in vows that hinder marriage and are not reserved to the Pope. Regular and secular confessors have specially delegated faculties for dispensing in vows that are not reserved.

NOTE. — In the United States the bishops have in Article 4, Form I, the faculty "*Dispensandi et commutandi vota simplicia in alia pia opera, et dispensandi ex rationabili causa in votis simplicibus castitatis et religionis.*" By this faculty the bishops have power to dispense in vows, even in those that are set down as reserved to the Sovereign Pontiff, such as the vow of perpetual chastity and the vow of entering a Religious Order with solemn vows. They are not, however, empowered to dispense from the three religious vows taken in an Order or congregation whose institute has been approved by the Holy See; but the bishop can dispense in those vows when the institute is not so approved. The bishops are accustomed to communicate the faculty of Article 4 in an ample manner. The only restriction in the archdiocese of St. Louis is: "*Exceptis tamen iis (votis) quæ emittuntur in societatibus religiosis sive virorum sive mulierum in Nostra Diocesi existentibus.*" The reader will find in Putzer's "Commentary on the Apostolic Faculties" a detailed explanation of the extent of the faculty

in Article 4, as well as of the manner in which according to the practice of the Holy See it ought to be exercised. (n. 106–110.) — END OF NOTE.

CHAPTER X

THE DIRIMENT IMPEDIMENTS

Article I

Impotence

1. IMPOTENCE is the incapacity to have carnal intercourse such as is required for the procreation of children. It is *absolute* if the incapacity extends to all persons of the other sex, otherwise it is *relative*. *Temporary* impotence exists only for a time and may be cured by lapse of time or by some lawful operation which does not endanger life; *perpetual* impotence lasts for life. It is *antecedent* if it precedes marriage, otherwise it is *subsequent*.

2. Antecedent and perpetual impotence annuls marriage by the law of nature, for the matter of the marriage contract is in that case impossible. This is true whether the impotence be absolute or only relative, but in the former case marriage is out of the question, while in the latter a valid marriage may be contracted with some one else, though it is impossible with a person with respect to whom the party is impotent. Subsequent impotence, which has supervened on marriage, can not, of course, annul the marriage already contracted, but if it is altogether certain it makes the use of marriage unlawful.

This, however, is not to be lightly presumed, for the right

is in possession, and for its lawful exercise it suffices if there be any probability of its not being impossible.

Neither does antecedent but temporary impotence annul marriage, for a contract is valid if the matter is possible or by using ordinary means can be made possible.

When it is doubtful whether a spouse is impotent or not the decision must be in favor of the validity of the marriage, and since all such questions belong to the *forum externum*, they fall under the cognizance of the bishop, nor can they be settled by the confessor.

3. Mere barrenness or sterility is not impotence, nor does it make marriage impossible or unlawful. There is a controversy among experts as to whether removal of the ovaries or of the womb or of both organs makes a woman impotent or only sterile. The decisions which have been given by the Roman Congregations in particular cases are quoted in defence of both opinions, and as yet no general solution of the question has been given. Until this happens, a woman who has undergone such operations should not marry without consulting the bishop, but if she is already married the more favorable opinion should be followed. This impediment is recognized by English law.

NOTE. — Impotence is also recognized by the civil law of the United States. Keezer, in his "Treatise on the Law of Marriage and Divorce," published in 1906, says (n. 12), "Incurable impotency at the time of the marriage and existing at the time of filing the libel is a ground for annulment." Again (in n. 160) we find the following: "The incapacity of either party to consummate the marriage, by reason of a defect of physical organization or infirmity, is a cause of divorce from the bonds of matrimony. And by

the laws of some States, such a cause, existing at the time of the marriage, renders the contract voidable, and it may be declared *ab initio* by a sentence of nullity." In n. 164 the same writer says, "The impotency must exist at the time of the marriage and be incurable in order to constitute a ground for divorce or annulment." From these extracts one may observe an agreement between the civil law in this country and the natural law regarding this impediment. Many States have passed laws regulating the time within which actions for annulment of marriage on the ground of impotence should be instituted. Regarding ecclesiastical trials for impotence the reader may consult Smith's "Marriage Process" (n. 182–195). — END OF NOTE.

Article II

Age

Males under fourteen years of age and females under twelve are presumed to be physically incapable of procreating children and not to have that maturity of judgment which is requisite for entering the married state. The Church has made them incapable of marrying by requiring the age of fourteen complete in males and twelve complete in females for the validity of marriage, unless, according to the legal phrase, malice supplies for age. This means that if it is proved to the satisfaction of the bishop that one who has not yet reached the age of puberty, as it is called, is nevertheless physically capable of procreating children, he may contract a valid marriage. The age of puberty varies according to race and climate; in northern latitudes it is not reached till the age of about fifteen in girls and seventeen or eighteen in boys. Even though the parties

may not yet be capable of having children, they may marry validly if they are of the age required by the Church, though it is desirable not to marry before full maturity. Those who are not baptized are not subject to the ecclesiastical impediment of age, but in this matter English law agrees with canon law.

Article III

Previous Marriage

1. One who is already married can not validly contract a second marriage unless the former bond is dissolved by one of the means described above, or by the death of the other spouse. Previous marriage, then, is a diriment impediment of a second marriage as long as it subsists, by the law of nature and by positive divine law. This impediment, therefore, binds all men, whether Christian or heathen.

It is not lawful for one who has been married before to contract a second marriage, unless there is certain proof that the first marriage has been dissolved by lawful authority or by the death of the former spouse.

If the decease is proved by a certificate of death or some similar authentic document, or by two witnesses who are above suspicion, or by any other legitimate means, the parish priest may allow the second marriage. If, however, there is no certain proof to be had, and it is doubtful whether the party in question is free to marry, the case must be referred to the bishop, who will investigate the circumstances, and if any prudent doubt remain he will not allow the second marriage without consulting the Holy See. Sometimes in special circumstances the Pope allows a second marriage, even when strict proof of the death of the former spouse is not obtainable, as he did in the case of

the wives of the Italian soldiers who perished in the battle of Adoua.[1]

2. If a person has unlawfully contracted a second marriage without the necessary certainty concerning the death of a former spouse, it does not follow that the second marriage is invalid, and that the parties must separate. If there is only slight doubt about the death of the former spouse, after making fruitless inquiries, the parties may live together as man and wife. If only one of the parties is in bad faith and is not certain of the death of a former spouse, while the other knows nothing of the difficulty, he should render the marriage debt, but he has no right to ask it as long as he remains in bad faith. If both parties are in bad faith, they can not lawfully use marriage as long as they are in that state. Inquiries should be made, and if probable reasons can be discovered for thinking that the former partner is dead, they may use marriage, according to a probable opinion. For even in this case the marriage has been contracted, it is probably valid, and it is not certain that any one else has a prior right, so the parties should be allowed to use it. If the second marriage was contracted in good faith, and a doubt about the death of a former spouse arises subsequently, inquiries should be made, and if they are fruitless the parties may live as man and wife. Of course, in all cases when it is found out for certain that a former spouse is alive, the second marriage is invalid, and the parties must separate, or at any rate must not live as man and wife together.

English law enforces this impediment, but if a former spouse has not been heard of for seven years or more, it will not punish the other party as guilty of bigamy if he

[1] S.O. July 20, 1898.

marries a second time, although he must separate if the former spouse appear subsequently.

NOTE. — Generally, according to United States law, a second marriage is invalid unless the first has been dissolved by death, or by a valid decree of divorce, and the dissolution takes place before the second marriage. Hence bigamy is committed if a person legally married marries another during the life of his or her consort, not having procured a divorce. Many States have made laws so that if the husband or wife be absent for a period of years and be unheard of during that time, the other party marrying again will not be liable to prosecution for bigamy; also, when husband or wife by a former marriage has been sentenced to imprisonment in the penitentiary for life, the other party will not be prosecuted for marrying again. —END OF NOTE.

Article IV

Consanguinity

1. Consanguinity is the bond of relationship by blood existing between those who are descended by carnal generation from one and the same near stock. The relationship, therefore, arises from community of blood derived from a common and not too remote ancestor. That common ancestor is called the *stock;* the distance in descent between one person and the other is called the *degree* of relationship; and the series of persons who descend from the same stock is called the *line,* which is *direct* if they descend from one another, otherwise it is *collateral.* The degrees are equal in the collateral line if the persons are equally distant from the common stock; otherwise they are unequal.

It is immaterial whether both parents of the common

stock are the same or only one, and whether the birth be legitimate or not.

The method of computing the degrees differs somewhat in canon law from that adopted by modern English civil law, which here follows the Roman civil law. The following are the rules for reckoning the degree of relationship according to canon law which is followed in moral theology:

a. To find the degree of relationship in the direct line, count the persons, leaving out the common stock.

b. In the collateral line, when the degrees are equal, count the persons in one of the lines of descent, leaving out the common stock.

c. When the degrees are unequal, count the longer line, leaving out the common stock in the same way, and add the number of persons in the shorter line. Thus, an uncle and niece are related in the second degree, touching the first, or mixed with the first.

According to the English method of computation, which is also followed in most States of the Union, all the persons are counted both in the direct and collateral lines, leaving out the common stock. According to this method, an uncle and niece are in the third degree.

Consanguinity in the first degree of the direct line annuls marriage by the natural law; and in further degrees indefinitely, but more probably only by ecclesiastical law. In the collateral line it is disputed whether consanguinity in the first degree annuls marriage by the law of nature or not; it certainly does so to the fourth degree by ecclesiastical law.[1]

This impediment, therefore, is partly of natural, partly of ecclesiastical law, and although in the more remote degrees of both the direct and collateral line it does not bind

[1] Council of Lat. 4 (1215).

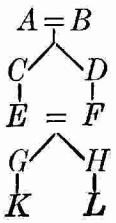
those who are not baptized, yet even among them there is a natural bond in blood relationship which after Baptism becomes a diriment impediment of marriage within the prohibited degrees. One who is baptized is subject to the laws of the Church, and can not, without the necessary dispensation, marry a relation within the forbidden degrees, even if the latter is not baptized.

English law follows in this matter that of Leviticus, and according to its method of computation consanguinity is a diriment impediment of marriage to the third degree inclusive, but not beyond. Thus an uncle can not marry a niece, but two cousins may marry, by English law.

NOTE. — The United States law regarding the impediment of consanguinity follows somewhat the English law. But in some States first cousins are forbidden to marry. This is so in the following States: Arizona, Arkansas, Colorado, Illinois, Kansas, Michigan, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Utah, and Wyoming. There are a few States, such as Indiana and Washington, which prohibit marriage to those who are more closely related by blood than second cousins. (See Schouler's "Domestic Relations," sec. 16.) — END OF NOTE.

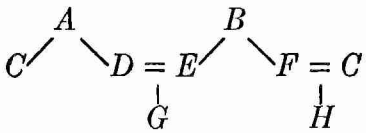
2. The impediment of consanguinity may be multiple from various causes.

a. If two near relations marry, their offspring will be related in several different ways:



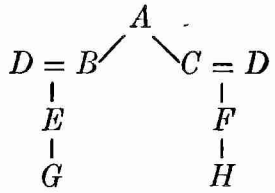
In this scheme K and L are cousins descended from the common stock $E=F$, and so they are in the second degree in the collateral line. Both K and L are also descended from $A=B$ through E and through F. On this account they are in double fourth degree of relationship. Thus there is a threefold relationship between them, and if a dispensation were required for K to marry L, mention should be made of this fact.

b. Similar results will follow if two relatives marry two relatives:



In this scheme G and H are descended from both A and B, and they are in double second degree of relationship.

c. Similarly, if one man successively marries two who are related to each other:



G and H are in the second degree from the common stock D, and in the third from the common stock A. D is supposed to marry his deceased wife's sister.

Article V

Affinity

1. Affinity is the relationship which one contracts with the relatives by blood of a person with whom he has carnal intercourse. For by complete carnal intercourse the parties become "one flesh" and the blood relatives of one become related to the other.

It has its origin in positive ecclesiastical law with regard to the collateral line and more probably also in the direct line. It may arise from lawful carnal intercourse in marriage, and then it extends to the fourth degree, or from unlawful intercourse, and in that case the Council of Trent restricted it to the first and second degree. The degrees in affinity with the husband are the same as the degrees of consanguinity with the wife and *vice versa*.

2. Although the impediment of affinity has its origin in ecclesiastical law and therefore it does not bind those who are not baptized, yet a certain natural bond corresponding in some sense with affinity arises from carnal intercourse even among the non-baptized. If a non-baptized person is received into the Church, this natural bond becomes the impediment of affinity, so that a pagan who had a pagan wife and who is converted to the Faith can not without dispensation marry any of the relations of his dead wife within the fourth degree.

As this impediment is of ecclesiastical origin, the Church can dispense from it, but she does not dispense in affinity in the first degree in the direct line arising from lawful carnal intercourse, and but seldom in the same degree when it arises from unlawful intercourse, and then the following clause is inserted in the dispensation, "Provided that the woman was born before the unlawful intercourse took place." In this way the danger of sanctioning a marriage between parent and child is prevented.

Affinity may be multiplied like consanguinity by having carnal intercourse with several who are related to each other. A man who commits sin with three sisters contracts a double affinity with each, and can marry none of them without dispensation. Affinity, however, does not

generate affinity, so that two brothers may marry two sisters, and a father and son may marry a mother and daughter.

3. A man who sins with the relatives of his wife in the first or second degree contracts affinity with his wife. This can not, of course, annul his marriage, but by ecclesiastical law it deprives him of the right to ask for the marriage debt until he is dispensed; but his wife may ask, as she is not to be punished for his sin. This is a penal law, and the penalty is not incurred by one who sinned in ignorance of it, or under compulsion. Confessors usually have power to grant the necessary dispensation.

English law only acknowledges affinity arising from lawful intercourse between those who are married, and it extends only to the same degrees, computed in the same way, as does consanguinity.

NOTE. — There is a considerable number of States where affinity is not recognized by civil law as an impediment of marriage, such as Arizona, Arkansas, California, Colorado, Florida, Idaho, and Illinois. — END OF NOTE.

Article VI

Spiritual Relationship

1. Spiritual relationship arises by ecclesiastical law from the administration of Baptism and Confirmation. According to modern discipline, it annuls marriage between the minister of the sacrament and the recipient and his parents, and also between the sponsors and the recipient and his parents. As it has its origin in ecclesiastical law, it does not affect those who are not baptized, and the impediment is doubtful and consequently non-existent when Baptism is doubtful or only probable. The impediment does not arise if Baptism

was administered privately without sponsors and afterward the ceremonies with sponsors are supplied in the Church.

There is a twofold impediment if the same person is sponsor both in Baptism and Confirmation, but there is only one although the same person is sponsor in Baptism or in Confirmation for several children of the same parents.[1]

Article VII

Adoption

By adoption a person becomes in law the child of another, though he is not such by nature. Legal adoption, according to Roman law, was a diriment impediment of marriage between certain parties, and in this matter the civil law has been *canonized* by the law of the Church. It binds only those who are baptized in as far as it is an ecclesiastical impediment of marriage, and only in three respects:

a. It annuls marriage between the adopter and the adopted and those descendants of the latter who are under his authority at the time of the adoption.

b. It annuls marriage between the adopted and the children of the adopter as long as they are under his authority.

c. Finally, it annuls marriage between the adopter and the widow of the adopted, and between the adopted and the widow of the adopter.

Roman law, as such, is nowhere in force at present, but wherever the law of the country makes provision for adoption so that in essentials it resembles in this point the Roman civil law, the Church *canonizes* it, and therefore adoption is a diriment impediment of marriage between the parties mentioned above. In England adoption exists

[1] S.O. April 29, 1894.

as a private contract between the parties, but it is not otherwise recognized by law, and so in England there is no room for the impediment of marriage arising from legal adoption. In most of the States of the Union there seems to be a form of adoption recognized by law sufficient to make it the basis of the ecclesiastical impediment.[1]

NOTE. — Some of the most eminent theologians of the United States, *e.g.*, Kenrick and Sabetti, held that the canonical impediment of legal relationship or adoption had no existence here. Their argument was that in this country there existed no perfect adoption from which alone this impediment arises. The opinion can scarcely be maintained any longer, for there are some States in which at present adoption, perfect in essentials, exists by statute law; and this is sufficient for the canonical impediment. There is a declaration of the Holy See called "*Instructio Austriaca*," from which it is evident that, if the adoption be such as to correspond in essentials to the perfect adoption of the Roman Law, there exists a diriment impediment. In n. 28 of that Instruction it is said: "*Adoptio, qualis arrogationi seu adoptioni perfectæ juris Romani quoad essentialia respondet, secundum nunc vigentem Ecclesiæ praxim, matrimonium dirimit.*" Cases may easily occur in which it may be doubted whether the requisites of perfect adoption are present, when there is a statute prescribing certain formalities. In such cases, the safer method is to apply to the Holy See with a description of the State law on adoption and of the particular facts in each case. It is deserving of notice that the bishops in the United States have no faculty to enable them to dispense in this impediment, and consequently, if a dispensation is to be sought, recourse must be

[1] Smith, Marriage Process, n. 263.

had to the Holy See. Some States, such as California, Iowa, Missouri, and Vermont, prescribe for adoption a written instrument only, duly executed and recorded; while others, like Massachusetts, Pennsylvania, and Wisconsin, require a judicial decree. — END OF NOTE.

Article VIII

Public Propriety

The impediment of public propriety arises by ecclesiastical law from valid and certain betrothal, and from ratified, not consummated, marriage.

Before the Council of Trent public propriety arose in the same way from betrothal or *sponsalia de futuro*, and from ratified marriage or *sponsalia de presenti*, and extended to the fourth degree in both cases. The Council [1] abrogated the impediment arising from invalid betrothal, and restricted it, even when it arises from valid betrothal, to the first degree in the direct and collateral lines. It made no change in the law affecting public propriety when it arises from ratified marriage, and therefore when it arises from this source it still annuls marriage to the fourth degree, and arises even from invalid marriage, provided that it is not invalid for want of consent.[2] For if there is no consent, the ground of the impediment is wanting, that is, the union of minds, as that of affinity is union of bodies, and that of consanguinity community of blood. Another exception is that this impediment does not arise from ratified marriage when it is invalid on account of public propriety arising from previous betrothal with a relative of the other party in the first degree.

[1] Sess. xxiv, c. 3, de ref. Matr.
[2] Pius V, *Ad Romanum*, July 1, 1568.

After the ratified marriage has been consummated, the impediment of public propriety is absorbed in that of affinity, and if a dispensation is required for a second marriage of the widow or widower with a relation of the former spouse, mention need not be made of public propriety, but only of affinity. The impediment, of course, lasts even though the betrothal or the marriage from which it arose is dissolved, unless a dispensation is obtained from the competent authority.

Article IX

Solemn Vows and Sacred Orders

1. A solemn vow of chastity, taken in a Religious Order, strictly so called, or taken implicitly when sacred Orders are received in the Latin Church, is a diriment impediment of marriage by ecclesiastical law. This has long been the practice of the Western Church, and it was solemnly enunciated by the Council of Trent: "If any one saith that clerics constituted in sacred Orders, or regulars who have solemnly professed chastity, are able to contract marriage, and that being contracted it is valid, notwithstanding the ecclesiastical law or vow; and that the contrary is nothing else than to condemn marriage; and that all who do not feel that they have the gift of chastity, even though they have made a vow thereof, may contract marriage; let him be anathema: seeing that God refuses not that gift to those who ask for it rightly, neither does He suffer us to be tempted above that which we are able." [1]

In the Eastern Church marriage may be contracted before receiving sacred Orders, and those who have married

[1] Sess. xxiv, c. 9.

may use their marital rights after receiving sacred Orders, but sacred Orders are a bar to contracting a new marriage. This shows that sacred Orders, apart from the vow, which in the Latin Church is taken when they are received, are a diriment impediment of marriage. By a special privilege, the simple vow of chastity taken by members of the Society of Jesus at their first profession is also a diriment impediment of marriage.

2. As this impediment owes its origin to ecclesiastical law, the Church can dispense in it, but she seldom does so except for grave reasons which concern the public weal. Leo XIII granted bishops the faculty of dispensing, by themselves or through some trusty ecclesiastic, the sick who are in great danger of death so that there is not time to have recourse to the Holy See, from all, even public, impediments which annul marriage by ecclesiastical law, except the priesthood and affinity in the direct line arising out of the lawful use of marriage.[1]

Article X

Difference of Religion

When a man and woman marry, they enter upon the closest possible union for mutual help and for the rearing and education of a family. Religion should be at the base of that union, and should furnish the fundamental principles for the education of their offspring. This, however, is hardly possible if husband and wife profess different religions, so that the very nature of marriage excludes difference of religion in husband and wife. If both the parties are baptized Christians, but only one is

[1] S.O. February 20, 1888.

a Catholic, difference of religion is only a prohibitory impediment; if one of the parties is not baptized, it constitutes a diriment impediment. The first is commonly called a mixed marriage, and we will devote to it the following section.

SECTION I

Mixed Marriages

1. Mixed marriages are forbidden by the natural, divine, and ecclesiastical law. For the parties are ministers to each other of the sacrament of Marriage; but it is unlawful for a Catholic without grave necessity to communicate in religious rites with a non-Catholic, and to receive a sacrament from him. Besides, it usually happens that in marrying a non-Catholic the Catholic party exposes himself to the danger of either losing his faith altogether, or at least of suffering its purity and brightness to be tarnished. The Church has forbidden mixed marriages from the earliest ages, and the Popes and bishops have issued innumerable instructions and warnings against them. It is without doubt a grave sin to contract a mixed marriage without a dispensation, and the Church shows her detestation of it by prohibiting any religious function at the marriage, even when a dispensation for it has been obtained.

2. However, in countries where Catholics and non-Catholics live together, and especially if the latter greatly outnumber the former, as they do in Great Britain and in the United States, it is almost impossible to avoid mixed marriages sometimes, and the bishops receive authority from the Holy See to grant the necessary dispensation. Certain conditions must be fulfilled before the

bishops can lawfully exercise their faculty of dispensing. In the first place, there must be a grave canonical cause, or a good reason such as the Church recognizes to be sufficient for a dispensation in this matter. In order to remove as far as possible the danger connected with mixed marriages, the Church requires that the non-Catholic party shall promise to leave the Catholic the free exercise of his religion, and that both parties promise to bring up all the children in the Catholic faith. Moreover, the Catholic party must undertake to do his best to bring about the conversion of his spouse to the Catholic religion. The necessity of these promises is founded in the natural and divine law, and although the common law of the Church does not demand that they be made in writing, this is frequently required by diocesan law.

If one of the parties be a baptized Catholic but one who has given up the practice of his religion without going over to any heretical sect, there is no strict impediment to his marrying a Catholic, but of course efforts should be made for his conversion, and if he remain indifferent the bishop should be consulted.

In England, when a dispensation has been obtained for a mixed marriage, the bishops allow the priest to assist at it at the altar rails vested in surplice and stole.

NOTE. — The practice in the United States is different from that of England, the priest not wearing stole or surplice, nor permitting the marriage to take place in the Church. (See Putzer, n. 219.) The Second Plenary Council of Baltimore (n. 334) says: "*Meminerint insuper sacerdotes, pluribus SS. Pontificum decretis vetari, ne ullus sacer ritus fiat, vel vestis sacra adhibeatur, dum fœdera ejusmodi*

ineuntur, quæ neque intra ecclesiam ineunda sunt." The priest, however, is not forbidden to wear the cassock and biretta, because these pertain to his ordinary dress. — END OF NOTE.

The banns should be published, but without any allusion to the difference of religion between the parties.

NOTE. — It is not the custom in the United States to have the banns proclaimed for mixed marriages. Dr. Heuser, in his book "The Parish Priest on Duty" (p. 136), asks, "Are the banns published in the case of mixed marriages?" The answer is, "No; because the Church is not supposed to take notice of the marriage as a sacred rite, although her minister attests it as a solemn mutual contract involving rights and duties." This custom of the United States is not contrary to the general practice of the Church regarding mixed marriages. In the supplement to the Roman Ritual for this country, under the heading, "*Modus assistendi matrimoniis mixtis*," we find the following (p. 12): "*In ineundis istiusmodi nuptiis, 1. Ecclesia ea generatim omittenda indixit, per quæ Catholicorum matrimonia decorantur. Quoad proclamationes Bannorum, Sancta Sedes hisce postremis temporibus declaravit, illas posse fieri in mixtis nuptiis quæ Apostolica dispensatione contrahantur, suppressa tamen mentione Religionis conjugum: et solum quando ad detegenda si quæ sint impedimenta, eas necessarias atque opportunas Ordinarius in Domino censuerit.*" It may be noticed from these words that the banns are not absolutely forbidden in mixed marriages when the diversity of religion of the contracting parties is not mentioned; nor are they commanded — "*posse fieri in mixtis matrimoniis.*" But according to this

instruction they should only be employed when the ordinary deems them necessary and opportune. — END OF NOTE.

A sermon before or after the function is not prohibited. Mass, however, should never be said nor the nuptial blessing given at a mixed marriage.

The Church does not allow the Catholic party to go through any marriage rite before a non-Catholic minister acting as such. If the non-Catholic minister acts as a civil magistrate, and Catholics are obliged to go through the marriage ceremony in his presence in order to have their marriages recognized by the State, it is permitted.

SECTION II

Difference of Religion

1. When one of the parties is a baptized Christian and the other is not baptized, marriage is not only forbidden, but is null and void by a universal custom of the Church, which has the force of a general law. Such a marriage, as is clear from St. Paul,[1] has been unlawful from apostolic times, but in the first centuries of the Christian era it was not invalid, and there are several well-known instances of saints being married to pagans. Gradually, however, a marriage between a baptized Christian and a pagan came to be looked upon as invalid, unless contracted in virtue of the Church's dispensation, and this has been the settled rule from about the beginning of the twelfth century. As the impediment is of positive law it can, of course, for grave reason be dispensed with, and then even the apostolic prohibition will cease if the dangers which are

[1] 2 Cor. vi. 14.

common to mixed marriages and to difference of religion can be avoided.

2. Difficulties arise when the Baptism of one or of both the parties is doubtful. According to the rule laid down in many decrees of the Roman Congregations doubtful Baptism with reference to marriage which is to be, or which has been, contracted, is presumed to be valid. Therefore marriage between one who is doubtfully baptized and another who is certainly not baptized is invalid on account of difference of religion. Marriage between two persons is valid when there is doubt about the Baptism of both or about its validity. Marriage is also valid when one of the parties is certainly baptized and there is a doubt about the Baptism of the other. In these cases it is the better opinion that as the above rule is only founded on a presumption, and this must yield to the truth, if afterward it is discovered for certain that one who was thought to be probably baptized was in fact never baptized, the marriage will be valid or not according as the other party was either not baptized or doubtfully or certainly baptized. Gasparri, however, and others think that when marriage has been contracted on the presumption of valid Baptism in case of doubt, it is valid and remains so, even though it is afterward discovered that the party in question was never baptized or that his Baptism was invalid. But this seems to be asserted on insufficient grounds.[1]

Article XI

Crime

By ecclesiastical law certain crimes committed by married people which are specially opposed to the sanctity

[1] Wernz, Jus Decret. iv, n. 508.

of marriage constitute a diriment impediment of a second marriage. These crimes are: adultery together with a promise of marriage or attempted marriage with the adulterer, murder of a spouse with the machination of the other party, adultery and murder of a spouse. In order that these crimes may constitute a diriment impediment of another marriage, certain conditions explicitly or implicitly contained in canon law must be fulfilled. These will be described in the following sections.

Section I

Adultery with Promise of Marriage

1. When husband or wife commits adultery with a third person and promises to marry that person after the death of the other spouse, the Church makes the adulterers incapable of contracting a valid marriage even after the first has been dissolved by death. The aim of the Church is to protect married people, to guard the sanctity of marriage, and to punish crime. A law, however, which restricts the liberty of marriage must be strictly interpreted, and so Doctors require the following conditions in the adultery and in the promise in order that the impediment may arise:

a. The adultery must be real, formal on both sides, and complete. It must be real, or one at least of the parties must be united in a true, valid marriage. That fact must be known to both the adulterers, or else they are not guilty of formal but merely material adultery. If each party knows that the other is married and the other conditions are verified, there will be a double impediment between them. The adultery must be complete, so that

it would be possible for it to produce its natural result in offspring.

b. The promise, too, must be real, not fictitious, accepted by the promisee, absolute not conditional, made with knowledge of the present marriage, and undertaking to contract marriage after the death of the other spouse. For one of the objects of the law is to remove the temptation to plot against the life of husband or wife.

Both the adultery and the promise must have place during the continuance of the same marriage, but it is immaterial whether the promise be made before, after, or at the same time as the adultery is committed.

2. This impediment of crime also exists between parties who have committed adultery with each other and attempted to marry during the lifetime of the spouse of one of them. The adultery must have the same qualities as in the preceding case, and the marriage must be really and truly attempted, not merely feigned. It is immaterial whether the attempted marriage precede or succeed the adultery. It is obvious that those will lie under this impediment who, after a civil divorce from a spouse, marry again and consummate the attempted marriage.

SECTION II

Murder of a Consort

Murder by a man and a woman of the spouse of one of them constitutes a diriment impediment to their marriage. This impediment does not arise unless death really ensues; attempted murder is not sufficient. Moreover, the murder must be committed not by one of them alone, even if the other afterward approve of it, but by both,

either by mutual physical help, or by moral persuasion of some sort. Death must also be inflicted with the intention of marrying the other when free, as Doctors gather from the end of the law, which is to prevent murder of a consort with a view to marrying some one else. This intention must at least be manifested in some way to the other party, though it is not necessary that it should openly actuate both of them to the perpetration of the crime.

Section III

Adultery and Murder

1. When a man and a woman commit adultery and one of them murders his consort in order to marry his accomplice in adultery, the third impediment of crime arises between them and hinders the marriage. In this case there need be no promise of future marriage, nor any attempt at marriage, nor need the death be the result of the plotting of both of the parties. It will be sufficient if the adultery have the qualifications mentioned above in the first section, and murder really be committed with the intention of marriage manifested in some way, as by presents or by love letters to the other party.

2. If to adultery and murder as just described there be joined the promise of future marriage, and the plotting of the death of the consort of one of the parties with the conditions laid down in the previous sections, there will be not one but three impediments, and if marriage were actually attempted during the murdered consort's life, there will be four. The impediment is purely of ecclesiastical law, and therefore it does not bind those who are

not baptized. If, however, one of the parties is baptized, it will indirectly affect the other.

3. In the external forum ignorance of this impediment of crime can not be effectively pleaded in favor of the validity of a marriage contracted in such ignorance. Ignorance of fact but not ignorance of law is admitted as an excuse sometimes. However, in the internal forum it is a probable opinion defended by many Doctors that ignorance of this impediment excuses the parties from incurring it, and if marriage be contracted it will probably be valid. The reason is that this impediment differs somewhat from the rest, in that it has more of the nature of a penalty imposed on the delinquents than have the other impediments. Moreover, the penalty inflicted in punishment for crime, the incapacity to marry the other party, is extraordinary and not such as could be inferred from the nature of the crime, nor such as naturally follows its perpetration. Therefore, according to the general rule laid down in the treatise on Laws, ignorance will probably excuse the parties from incurring this impediment in the tribunal of conscience. This opinion will enable the confessor to allow guilty parties who make their sin known to him in confession to live together after marriage, but it will be safer to ask for a dispensation from the occult impediment and convalidate the marriage. If the crime becomes known to the confessor before marriage, a dispensation should be got before the marriage is contracted.

NOTE. — In the United States the bishops have the faculty of dispensing in this impediment according to Article 8, Form I: "*Dispensandi super impedimentum*

criminis, neutro tamen conjugum machinante, et restituendi jus amissum petendi debitum." It is customary for the bishops to subdelegate this faculty to the priests of their respective dioceses. On the meaning of this faculty, see Putzer, n. 124. Whatever restrictions may be placed regarding the exercise of this faculty can be generally found in the *pagella* or diocesan statutes. — END OF NOTE.

Article XII

Error, Slavery, Imbecility

1. By error is understood a mistaken judgment by which one person or thing is taken for another. It differs from ignorance, which is merely the absence of knowledge. Error, if it is substantial, annuls marriage as it does other contracts, by the law of nature itself. For a contract is not valid unless there be an agreement of wills between the contracting parties, and there can not be that agreement if one of the parties is in error about the substance of the contract. There will be such a substantial error when there is a mistake about the person with whom marriage is contracted. If *A* thinks he is marrying *B* and intends to marry *B*, the marriage will be invalid if the other party to the contract is *C*, not *B*. Sometimes a mistake about the quality or rank of the other party may be substantial and invalidate the marriage. Thus, if a woman thinks she is marrying the eldest son of a peer, and only intends to marry the eldest son, who she thinks is present, the marriage will be null and void if the bridegroom is not the eldest son of a peer. Ordinarily, however, a mistake about the quality or condition of the other party will not be substantial, and will not invalidate the contract. If

the lady intends to marry the person present who she wrongly thinks is the eldest son, the marriage will be valid. It is possible that there should be a substantial mistake about the subject-matter of the contract of marriage. Thus, if a woman thinks that marriage is a mere union of friendship between the parties, and when she marries does not intend to give her husband any right to have children by her, the marriage is invalid. Mere ignorance as to the way in which children are brought into the world does not invalidate marriage.

2. If a freeman married a slave under the mistaken belief that she was free, the marriage was null and void by ecclesiastical law; if he married knowing the servile condition of the other party, the marriage was valid. To this extent the Church received the Roman legislation on the marriage of slaves, according to which they could not validly marry one that was free, and their marriages among themselves were merely at the good will of their masters. The law of the Church corrected what was inhuman in the Roman civil law, and adopted its provisions as far as they were in harmony with Christian principles. Nowadays, of course, this impediment can scarcely be of practical importance in any part of the world.

3. Imbeciles who have not the use of reason are incapable by the law of nature of contracting a valid marriage, unless it is contracted in a lucid interval. If the loss of reason supervenes on marriage which has been validly contracted already, it can not of course annul the marriage.

Article XIII

Violence and Fear

1. Violence is the onset of force too great to be resisted, and fear is a perturbation of mind arising from present or future danger. Here we treat of fear caused by extrinsic violence, inasmuch as it is a diriment impediment of marriage.

When marriage is contracted through grave fear, caused unjustly by a free agent with a view to extorting marriage, ecclesiastical law makes it null and void. Whether such a marriage is invalid by natural law is a moot point among Doctors. Fear may, indeed, sometimes be so excessive that it takes away the use of reason, so that a man under its influence does not know what he is doing. If a man married under the influence of such terror, the marriage would of course be invalid for want of consent. But commonly even grave fear does not produce such effects; a man in danger of shipwreck or death knows as a rule what he is doing, and if he marries in such circumstances, though induced by fear to do so, the marriage will be valid. But when he is unjustly forced by some one to marry against his will, the injury done to him is a sufficient reason for the Church to make the marriage null and void, even though he knew what he was doing and consented to the marriage. The only difference between this case and the former lies in the injury inflicted by the fear caused by a free agent. This, however, does not seem sufficient ground for asserting the nullity of the contract by natural law, though it affords a just reason why positive law should make it

invalid. The better opinion, then, seems to be that grave fear is a diriment impediment of marriage by ecclesiastical law when the fear is caused unjustly by some one with a view to compelling the party to marry against his will. Hence, if one who had violated a woman was threatened with a beating and married her in order to escape it, the marriage would be valid. Fear arising from reverence for parents and superiors is in general not sufficiently serious to make marriage contracted under its influence null and void. In certain circumstances, however, such a fear may become grave and sufficient to annul marriage. Much depends on the character of the party who was influenced by fear, and on the means employed to compel acquiescence to the wishes of harsh and severe parents or guardians. The question as to whether in any particular case there was grave fear is a question of fact to be determined by the ecclesiastical judge after weighing all the circumstances of the case.

2. Although marriage has been contracted under the influence of grave fear sufficient to render it invalid, the marriage may afterward become valid if fear disappears, and the party who was under its influence freely cohabits with the other, and expresses matrimonial consent. In this case it will not be necessary to repeat the external solemnization of the marriage unless the impediment was publicly known. It will be sufficient if the parties manifest their consent to be man and wife privately when freed from the influence of grave fear.

As may be gathered from what has already been said, slight fear, such as any ordinarily constituted person can despise, does not invalidate marriage, even when it is caused unjustly with a view to extort marriage.

Article XIV

Abduction

The Council of Trent[1] made the following law: "The Holy Synod ordains that no marriage can subsist between the abductor and her who is abducted so long as she shall remain in the power of the abductor. But if she that has been abducted, being separated from the abductor and being in a safe and free place, shall consent to have him for her husband, the abductor may have her for his wife." This decree made abduction a diriment impediment of marriage, and in keeping with its tenor the impediment may be defined as the violent abduction of a woman from a place of safety to another place where she is detained in the power of the abductor for the purpose of marriage. In order to constitute the impediment the abduction must be against the will of the woman, whether it be effected by open violence, or threats, or fraud; for if she freely consent both to the abduction and to marriage, we have elopement, not abduction. Consent to both abduction and marriage is required, for the Council made an abducted woman incapable of contracting a valid marriage, as long as she is in the power of the abductor. The woman, too, must be the abducted party; if a man were forcibly carried off by the orders of a woman who wished to marry him, this impediment would not arise. It is a disputed point among Doctors as to whether the impediment would arise if a man carried off his betrothed by violence in order to marry her. The better opinion is that the impediment would hinder the marriage, for

[1] Sess. xxiv, c. 6, de ref. Matr.

although betrothal gave the man a right to marry the woman at the proper time, still it gave him no right to use violence for the purpose.

The words in the definition "from a place of safety," signify a place where the woman is not in the power of the abductor, so that to give rise to the impediment the woman must be taken from one place to another which is morally distinct, and where she is under the control of the abductor. The abductor's aim must be to contract marriage, not merely to satisfy his lust.

The impediment is of ecclesiastical law and lasts as long as the person abducted remains in the power of the abductor, for, as the Council says, if the woman be restored to her liberty and then freely chooses to have the abductor for her husband, the impediment ceases.

The Council imposed the penalty of excommunication on the abductor and on all who aid and abet him, besides obliging him to give the woman a sufficient dower whether he marry her or not.

Article XV

Clandestinity

1. A clandestine marriage is one that is contracted without the solemnities which are prescribed by the Church, so that a civil marriage before the registrar, a marriage in private, and a marriage before a priest not duly authorized to assist at it, are all clandestine marriages. Such a marriage always was and is gravely sinful, because it is forbidden by the Church on account of the great evils which frequently are the consequence, and because marriage is a sacrament and it should be received with fitting

solemnity in the Church. Moreover, the Council of Trent by the decree *Tametsi*[1] made clandestine marriages invalid in all places where the decree has been published according to the directions therein laid down. These will be best set forth in the words of the Council itself. The Council says:

"And that these so wholesome injunctions may not be unknown to any, it enjoins on all ordinaries that they as soon as possible make it their care that this decree be published and explained to the people in every parish church of their respective dioceses; and that this be done as often as may be during the first year, and afterward as often as they shall judge it expedient. It ordains, moreover, that this decree shall begin to be in force in each parish at the expiration of thirty days, to be counted from the day of its first publication made in the said parish."

2. This decree, then, differs from other ecclesiastical laws, in that there is a special mode prescribed for its promulgation, and it does not bind anywhere unless it has been thus promulgated, or at least unless it has been observed in the place for a long time as the decree of the Council of Trent. In order to obtain binding force in any place, the decree must be published in the parish church by the authority of the bishop, and it will begin to bind in the parish thirty days after it was first promulgated. This special mode of promulgation was adopted for the decree in order that difficulties might not arise from it concerning the marriages of heretics and schismatics. It was foreseen that they would not receive it, and yet they would be subject to it if it were promulgated in the ordinary way, and that therefore their marriages would be null and void

[1] Sess. xxiv, c. 1, de ref. Matr.

and their children illegitimate. In order to obviate these difficulties the Council prescribed that the decree should be published in each parish, so that the parishes which had fallen away from the Church would not have it promulgated for them and would not be subject to it. Therefore, as a general rule, the decree does not bind heretics in places where at the time of its promulgation they had separate churches and formed distinct religious bodies; on the other hand, it binds all, both Catholics and Protestants, if it has been published in a parish where the latter did not at the time form a separate religious body.

Thus there are places where the decree has never been published and where consequently it is not in force. Among these places are England, Scotland, Norway, Sweden, Denmark, most of the provinces of the United States of America, and some cantons of Switzerland.

There are other countries where it has been promulgated in almost every parish, and in general binds all baptized persons, whether Catholics or Protestants. Such places are Italy, Spain, Portugal, France, Austria, and Belgium.

There are other countries where marriages between Catholics are subject to the decree, but not others. Among these are Ireland, Holland, the German Empire, Russia, Poland, Canada, Louisiana and Florida, Hungary, Bombay, and Malabar.

As a general rule, where marriages between non-Catholics are exempt from the decree, mixed marriages are also exempt, and *vice versa;* but Malta is an exception, for by a decree January 12, 1890, marriages contracted there between non-Catholics are valid though clandestine, while clandestine mixed marriages are invalid.

3. The conditions required for the validity of a marriage

which is subject to the decree *Tametsi* are that the marriage must be solemnized in the presence of the parish priest of one of the parties, or in the presence of some other priest with the leave of the parish priest or of the ordinary, and two or more witnesses. If the parties live in different parishes, the parish priest of either place may assist at the marriage validly, but by custom, and sometimes by diocesan law, the parish priest of the bride is to be preferred. The priest who thus has the right to assist at a marriage is the priest of the parish where the parties have their domicil or quasi-domicil. A domicil is acquired in a parish by actually living in it and by having the intention of always living there unless called elsewhere. A quasi-domicil is acquired by living in a parish and having the intention of living there for the greater part of a year. By a special decree of the Holy Office, May 6, 1886, Catholics in the United States, who go from a place where the decree *Tametsi* binds, to another place where it does not bind and live there for one month, acquire thereby a quasi-domicil for the purpose of marriage.

NOTE. — The privilege referred to by the author was conveyed in the following terms: "*Eminentissimi Inquisitores Generales die* 6 *Maii* 1886, *re mature perpensa, sequens ediderunt decretum*: '*Concilio Baltimorensi postulante supplicandum SSmo ut decernere dignetur in Statibus Americæ confederatis, se transferentes e loco, ubi viget caput Tametsi, in alium locum, dummodo ibi continuo commorati fuerint per spatium saltem unius integri mensis, et status sui libertatem, uti juris est, comprobaverint, censendos esse ibidem habere quasi-domicilium in ordine ad matrimonium, quin inquisitio facienda sit de animo ibi permanendi per majorem anni partem.*' *In audientia vero die* 12 *Maii* 1886 *referente R.P.D.*

Josepho D'Annibale S. Officii adsessore, SSmus Dominus Leo XIII prædictum EE. PP. Decretum sua auctoritate ratum habere et confirmare dignatus est, contrariis quibuscunque non obstantibus."

It may be said that the proper interpretation of this privilege has now an historical interest only on account of the new legislation of the Church contained in the decree, "*Ne temere,*" which makes the acquisition of a quasi-domicil by a month's residence universal and thus causes the privilege as such to cease in the United States. However, the validity of a considerable number of marriages already contracted in this country depends upon the true meaning of the privilege, so that according to a stricter interpretation many marriages would require revalidation. From the words quoted it follows that in the United States persons who move from a place where the *Tametsi* is in force to another place where they stay continuously for one month are to be considered as acquiring in this latter place a quasi-domicil sufficient for marriage. The author interprets "*alium locum*" as another place where the *Tametsi* is not binding. Many, however, have understood "*alium locum*" as another place, different from the former place of residence, whether the *Tametsi* was binding or not in the new residence. The difference between the two opinions has been of practical importance. Thus a person leaving the city of St. Louis where the decree is binding and going to the diocese of New Orleans where it is also binding would not, according to the author's opinion, after a month's residence in the latter place, acquire a quasi-domicil, while according to the other opinion he would acquire it because he would go to another place, thus verifying the terms of the decree. There are also some,

perhaps more correctly very many, who have held that the privilege in question should properly be extended to all who go from one place to another, irrespective of the existence of the *Tametsi* in the former place of residence; so that if a person reside in a place for a month, he would acquire a quasi-domicil there, whether he left a place where the *Tametsi* was or was not in force. Comparing this last opinion with the two preceding ones, it is evident that these follow more closely the literal meaning of the words expressing the privilege, while the other seems to be extending the privilege beyond the strict signification of the terms. On the other hand, when one considers the motive with which the bishops of this country asked for the privilege and the fact that the Holy See evidently wished to accede in substance to their request, the third opinion appears more probable than the other two. The chief reason for the petition was, in the words of the bishops: "*Gravia incommoda et anxietates ac molestiæ quæ frequenter sacerdotibus oriuntur, si canonicæ præscriptiones de quasi-domicilio sint servandæ.*" In the United States there is a large fluctuating population, so that many persons do not have any permanent abode, nor can it be even said that they have the essentials hitherto required for a quasi-domicil, *i.e.*, actual residence with the intention of staying for the greater part of a year. They may have remained for a month or two in a place, but there was no intention of making it their abode nor of remaining even for six months, so that it was often difficult to say who was their *proprius parochus* for matrimony. Then, if a priest to whom parties of this kind would apply for marriage should not be able, on account of the uncertainty about their *proprius parochus*, to tell them the priest who could attend to their marriage,

there would be danger that they would contract a civil marriage or perhaps contract before a non-Catholic minister. Hence it was important to have some fixed period of residence determined, *e.g.*, one month, so that, apart from any intention of the parties to leave or to remain, the pastor of the place where such residence for a month occurred could perform the marriage ceremony. Now a large number of such cases would arise from persons going from a place where the *Tametsi* was not binding to some other place, so that it is to be presumed that the bishops in their petition proposed to make provision for such cases. Similarly, it is to be presumed that the Holy See intended to make provision so that after a month's residence in a place a person might get married by the pastor of that place, no matter whether he had immediately before lived in a place where the *Tametsi* was binding or in a place where it was not binding. Let us suppose, for example, that a female from some rural parish of the diocese of St. Louis, in which parish the *Tametsi* is not in force, comes into the city of St. Louis, where it is in force, and lives as a servant in some parish of the city for a month. Can she be married by the pastor of this parish on the ground of the month's residence? Yes or no, according to the mode in which the privilege should be interpreted. One thing, however, seems beyond doubt, *viz.*, that it was the intention of the bishops to procure for the pastors the privilege by which a month's residence would suffice for a quasi-domicil in this class of cases as well as in the converse class, namely, when the party leaves, *e.g.*, the city of St. Louis and goes to some parish in the country where the *Tametsi* is not binding. It is also clear that there would be at least equal reason for a favorable answer to the former petition as to the latter.

The question regarding those interpretations of the privilege has not been settled by the Holy See. De Becker, in his treatise, "De Sponsalibus et Matrimonio," says that a dubium regarding the extent of the privilege was proposed to the S. C. of Propaganda by a bishop of the United States, but that no reply was received. — END OF NOTE.

In order to lose a domicil or quasi-domicil that has once been acquired, the party must leave the place and must have the intention of not returning to it.

Minors who are not *sui juris* retain the domicil of their parent or guardian as long as they do not renounce it; married women similarly retain the domicil of their husbands. Public officials, professors, students, servants, and others in like capacities, acquire a quasi-domicil in the place where their avocations call them as soon as the two necessary elements are verified, as soon, that is, as they actually take up their abode in the place with the intention of staying there for the greater part of a year unless they are called elsewhere.

4. Strangers who are staying for a time in a place subject to the decree must conform to the law of the place with regard to marriage, even though they come from a parish where it does not bind, for contract is governed by the law of the place where it is entered into. Embassies of foreign nations do not enjoy the privilege of exterritoriality in this respect, so that the marriage of a baptized British subject contracted in the British embassy at Rome is subject to the decree of Trent.[1] Strangers, who come from a place where the decree binds to another place where it does not bind, with the fraudulent intention of marrying there, can not contract a valid marriage unless they acquire a

[1] S.O. August 1, 1900.

domicil or quasi-domicil in the place, or obtain leave for some priest to marry them there from their parish priest or from their ordinary.

It is a disputed point whether two strangers who came from a place where the decree binds without any intention of marrying could contract a valid marriage in a place where the decree does not bind, without acquiring a domicil, quasi-domicil, or obtaining the leave of their parish priest. The decisions of the Roman Congregations favor the negative view, so that such a marriage should never be permitted, though after being contracted it can only be declared invalid by competent authority.

Those who wander about and have no domicil or quasi-domicil anywhere, may with leave of the ordinary validly and lawfully contract marriage in the presence of the priest of the parish where they happen for the time to be staying. Such people are called *vagi*.

Any one in priest's orders may receive delegated authority from the parish priest or the ordinary of the parties so as validly to assist at their marriage.

5. Besides the priest, at least two witnesses must assist at a marriage, according to the decree of Trent. Any person, whether a man or a woman, who has the use of reason and who knows what is going on so that he can give evidence on it, may act validly as a witness. If at any time there comes to be a general impossibility for those who wish to marry in any place to reach the parish priest, and if the impossibility lasts for a considerable time, marriage may be contracted validly before witnesses alone. We saw above that impossibility of getting at the parish priest in the case of a particular marriage would not exempt the parties from the law.

The law regarding clandestine marriages, like any other positive enactment, may be abrogated by contrary custom, as in fact it has been in Japan. The Holy Office, however, has several times declared that the mere non-observance of the decree by schismatics and heretics can never cause the decree of Trent to lose its binding force.

From what has been said it follows that clandestine marriages in England are indeed gravely sinful, but as a general rule were not invalid, unless there was some other diriment impediment between the parties. If Catholics had contracted a valid but clandestine marriage, they could repent of their sin, and then ask for absolution and the nuptial blessing from the priest. In the case of a mixed and clandestine marriage there appeared to be no obligation of giving or receiving the nuptial blessing, though this might be done unless the bishop ordained otherwise.[1]

The decree of the Sacred Congregation of the Council, August 2, 1907, made a great change in the law of the Church with regard to clandestine marriages. The decree affects all marriages contracted on and after Easter Sunday, April 19, 1908, in which one of the parties at least is a baptized Catholic, but it does not affect marriages contracted before that date.

By this decree no marriage is henceforth valid unless it be contracted before the parish priest, or one who has the general cure of souls in the place where the marriage is celebrated, or before the local ordinary, or before a priest delegated by one or the other, and before at least two witnesses. In order to assist at marriage validly the priest and the local ordinary must have acquired possession of their office, and not be publicly and by name excommuni

[1] S.O. December 14, 1865.

cated or suspended from that office. They can assist validly only within the limits of the territory assigned to them, but within those limits they can validly assist at a marriage contracted either by their subjects or by others. They must freely ask and receive the consent of the parties without being compelled thereto by force or grave fear. Something more is necessary in order that their assistance be also lawful.

They must have satisfied themselves in the manner prescribed by law of the freedom of the parties to marry; also that one of the parties has a domicil in the place where the marriage is contracted or at least has lived there for a month; otherwise, in order that the priest or the local ordinary may lawfully assist at marriage, they need the leave of the priest or of the ordinary of one of the parties, unless there be grave necessity which excuses from it.

Except in case of necessity a priest may not assist at the marriage of those who have no fixed place of abode without leave of the ordinary after the matter has been referred to him or to a priest deputed by him for the purpose. As a general rule the marriage must take place before the priest of the bride unless there be some good reason to the contrary.

A parish priest, and one who has the general cure of souls, and the local ordinary, may grant leave to any determinate and certain priest to assist at marriages within the limits of their respective territories. But in order to assist lawfully and validly, such delegated priest must observe the terms of his mandate, and the rules laid down above for the assistance of the parish priest and of the local ordinary.

In imminent danger of death when the parish priest, or

one with the general cure of souls in the place, or the local ordinary, or a priest delegated by one of them, can not be had, marriage may be contracted validly and lawfully before any priest and two witnesses for the sake of conscience and the legitimization of children, if this is required.

If in any country neither a priest with the cure of souls nor the local ordinary, nor a priest delegated by either of them can be had, and that has now been the case for a month, the parties may marry validly and lawfully by expressing their formal consent before two witnesses.

When marriage has been celebrated, the priest who has the cure of souls, or one who takes his place, must at once insert in the marriage book the names of the spouses and of the witnesses, the place and date of the marriage, and other details, according to the method prescribed in the Ritual or by the ordinary; and that, although another priest delegated by him or by the local ordinary assisted at the marriage.

Moreover, the priest who has the cure of souls must note also in the "Book of Baptisms" that the party contracted marriage on such a day in his parish. And if the party were baptized elsewhere the priest of the marriage must send notice to the priest of the Baptism either immediately or through the bishop's court, so that the marriage may be entered in the "Book of Baptisms." When marriage has been contracted in danger of death before a priest procured for the purpose, or only before two witnesses as above, the priest in the former case and the witnesses in the latter are bound jointly and severally with the contracting parties to take care that the marriage be entered in the prescribed books as soon as possible.

Priests guilty of violating these precepts are to be suitably punished by the ordinary, and one who without leave or just cause marries the subjects of another must surrender the fees received to the priest whose rights he has infringed.

Heretics and schismatics who have never been admitted into the Catholic Church are not bound by this decree.

Mixed marriages, however, in which one of the parties is a baptized Catholic, are subject to the decree, except in the German Empire, where they are valid if the parties were born and marry therein.

CHAPTER XI

DOUBTFUL IMPEDIMENTS

1. When there is a doubt as to the existence of a diriment impediment which annuls marriage by natural or divine law, marriage must not be contracted, for as there would always be a doubt as to whether it was valid, the parties would be exposed to the continual danger of sinning against the natural law. Theologians make an exception to this general rule in favor of those who labor under probable impotence, for these may marry on account of the strong presumption that all men are potent unless the contrary is certain, and because it would be an intolerable hardship to prohibit a person from marrying because of such a doubt. In the case of a doubtful impediment of positive law, we must distinguish between a doubt of law and a doubt of fact. When there is a doubt whether the positive law extends to the particular case, as whether spiritual relationship arises between the sponsors in a private Baptism and the child or his parents, the impediment practically does not exist, as the law is of strict interpretation and the Church dispenses as far as is necessary in such a case of doubt.

When the doubt is about a fact, as whether the parties are related within the prohibited degrees of kindred, the Church does not supply if the impediment really exists, and a dispensation should be asked for to make sure. The bishop has power to dispense in such cases of doubt.

When marriage is contracted with a supposed impediment which in reality does not exist, the marriage will of course be null and void if the parties thought that it was altogether impossible, and merely intended to go through the external form. On the other hand, it would seem to be valid if they intended to marry as far as they could, though they were afraid they could not do so. And so if one, whose consort has been absent for a long time and who is not known to be dead, as in fact he is, marries again, giving her consent to the marriage as far as possible, it would seem that the marriage is valid though unlawful.

2. When a marriage has been contracted and a doubt subsequently arises as to its validity on account of the probable existence of a diriment impediment, inquiry must be made with a view to settling the doubt, and in the meanwhile the party in doubt must abstain from asking for the marriage debt, though he is not precluded from rendering it to a consort who asks for it in good faith without any suspicion about the validity of the marriage. If the doubt still remains after ordinary diligence has been used in making inquiries, the doubt may be put aside, and the marriage may be presumed to be valid. The rules of law may be applied to such a case, "In doubt we must presume the validity of the act," and, "In doubt the condition of him who is in possession is the stronger." These rules apply with all the greater force inasmuch as marriage is favored, and the decision must always be given in its favor in case of doubt.

If it becomes certain that a marriage which has been contracted is invalid by reason of a diriment impediment existing between the parties, and the invalidity is publicly known, the parties must separate. Otherwise there would

be danger of sin and public scandal. If the impediment is secret and the parties are in good faith without any knowledge of its existence, they should be left in their ignorance until a dispensation from the impediment has been obtained. The dispensation should be executed in one of the ways to be described in a subsequent chapter.

If the parties know of the existence of the impediment and of the consequent nullity of their marriage, they must separate at least from bed, until a dispensation can be procured. Whether they can be permitted to live together as brother and sister in the same house, depends on whether they can thus avoid all proximate occasion of sin. If they can not, some excuse to avoid scandal and awaking suspicion must be found for a temporary separation.

CHAPTER XII

DISPENSATIONS FROM DIRIMENT IMPEDIMENTS

1. THE Church can not grant a dispensation from those impediments which belong to the natural and divine law. She can not, for example, allow a Christian to marry again while a former wife is still alive, nor dispense in a case of certain impotence. Although she can dispense in all impediments which have their origin in ecclesiastical law, yet as a matter of fact she but seldom does so in some of them, such as the priesthood, and affinity in the first degree arising from consummated marriage. The Council of Trent decreed universally that "as regards marriages to be contracted, either no dispensation at all shall be granted, or rarely, and then for a cause, and gratuitously." [1] Still, according to modern discipline it is not uncommon for dispensations to be granted in the more remote degrees of consanguinity and affinity, in spiritual relationship, in occult crime, and in some other impediments.

2. As the diriment impediments of marriage belong to the common law of the Church, *per se* only the Holy See can lawfully dispense in them. However, when there are very grave reasons for granting a dispensation and there is no time to communicate with Rome, bishops may dispense in occult impediments, as, by a concession of Leo XIII, February 20, 1888, they may also do in both public and

[1] Sess. xxiv, c. 5, de ref. Matr.

occult impediments when one of the parties is in danger of death and there is not time to have recourse to Rome. Bishops may dispense, too, in doubtful impediments for the sake of greater security. Besides these ordinary powers, granted to them by custom or by the express or tacit consent of the Pope, the bishops of most countries now commonly receive from the Holy See delegated authority to dispense in those impediments which are more easily dispensable. When the parties are subject to different bishops, that bishop will have power to dispense whose subject is specially bound by the impediment, as, for example, the person under vow, and the Catholic party in a mixed marriage. If both parties are equally affected by the impediment, as by that of consanguinity, and the dispensation is granted by faculties received from Rome, either bishop may lawfully grant the dispensation. It has several times been decided that all special faculties habitually granted to local ordinaries by the Holy See neither cease nor are suspended on account of their death or removal from office, but pass to their successors according to the terms of the decree of the Holy Office, Feb. 20, 1888.

The Pope dispenses from public impediments through the datary,[1] and from occult through the penitentiary. Propaganda, however, exercises the authority of both those offices in favor of those who are subject to its jurisdiction, as some English-speaking countries are, though they may have recourse to the penitentiary, if they choose, in matters subject to its jurisdiction.

When application is made to the datary for a dispensation from a public impediment in favor of parties who also

[1] After November 3, 1908, through the Congregation on the Discipline of the Sacraments.

labor under an occult impediment, a dispensation from the latter must be sought from the penitentiary, mentioning the public impediment for which a dispensation has been asked from the datary, but without giving the real names of the parties. In this case, when a bishop has faculties to grant both such dispensations, he does not require the special faculty of *cumulating*, as he does in other cases of multiple impediments.

As a general rule when the Holy See grants a dispensation, this is granted *in forma commissoria*, by which the bishop who sent in the petition is commissioned to dispense the parties after verification of the allegations made, and under certain conditions. The bishop thus commissioned may delegate the verification of the allegations and the execution of the dispensation to one of his clergy, or if the parties live in another diocese to the bishop of that diocese.

A tax to cover expenses and a composition to be spent on pious purposes is imposed on parties dispensed by the ordinary Roman tribunals. The composition varies with the impediments for which a dispensation is asked, and according as the parties are poor, almost poor, or rich. The penitentiary grants dispensations gratuitously from occult impediments, and in recent times it has obtained power to dispense the poor even from public impediments.[1] It is a disputed question whether a dispensation granted by the penitentiary from a public impediment in favor of one who falsely alleged that he was poor would be valid.

Propaganda grants dispensations to its subjects gratuitously, but it sometimes requires the party dispensed to offer an alms.

[1]This power was taken away by the Constitution *Sapienti consilio*. 29 June, 1908.

3. Matrimonial dispensations can not be granted lawfully even by the Pope without good cause, and a good cause is required for the validity of a dispensation granted by a bishop. A cause is motive or final when it is ordinarily deemed sufficient for granting a dispensation; when it only induces the superior to grant a dispensation more readily, it is said to be impulsive. When the petition for a dispensation omits to mention what should be mentioned, it has the defect of *subreption;* when it alleges what is false, there is *obreption.* When subreption or obreption occur in the motive cause, the dispensation is invalid at least if the cause alleged was the sole cause, and even if it was not the validity of the dispensation is doubtful. Subreption or obreption in an impulsive cause does not affect the validity of the dispensation. In doubt as to whether a cause falsely alleged for a dispensation was motive or impulsive, the presumption will be in favor of the validity of the dispensation, *In dubio standum est pro valore actus.* If the motive cause for granting the dispensation ceases before the dispensation is executed, the dispensation will lapse; if, however, the motive cause ceases to exist after the dispensation has been executed, though before the marriage has been contracted, the impediment has been removed and the parties may marry.

Propaganda, May 9, 1877, issued an instruction on matrimonial dispensations, which sets forth and explains the ordinary canonical causes which are accepted as sufficient for granting a dispensation. The same causes, however, are not sufficient for a dispensation from all impediments, and the party interested should put down in his petition all the grounds that he can find for granting the favor he requests. We can not do better than give

here the chief portion of this important document in Fr. Guy's translation:

"1. *Smallness of the place*, either absolute or relative (as regards the female petitioner alone), seeing that in the place of her birth or even domicil a woman's relationship is so widely spread that she is unable to meet with any one to be married to of an equal position with her own, save a relative by blood or by marriage, without leaving her country, which would be a hardship to her.

"2. *The advancing age of the woman.* If, for instance, she is over twenty-four and has not hitherto met with one of her own position to whom she might be married. But this reason does not hold good in the case of a widow wishing to marry again.

"3. *Deficiency or absence of dowry.* If a woman has not actually a dowry large enough to enable her to marry another of her own position, unconnected by blood or marriage, in her own place of abode. And this reason becomes all the more weighty when the woman has no dowry at all and a relation by blood or by marriage is willing to marry her, or even to make a suitable settlement upon her.

"4. *Contentions about inheritance* that have already arisen or serious or imminent danger of the same. If a woman has on hand an important suit in reference to her inheriting wealth of great amount, and there is no one else to undertake a contention of this kind and carry it on at his own expense save the person who is desirous of marrying her, a dispensation is usually granted, for it is of benefit to the community at large that an end should be put to the contention. A reason of this nature, however, suffices only in cases of remote grades of relationship.

"5. *Poverty* on the part of a widow with a numerous family which some man promises to support. But at times a widow obtains the benefit of a dispensation owing to her youth and the danger of incontinence.

"6. *The blessing of peace;* and under this head come not only treaties between realms and princes, but the cessation of serious enmities, disturbances, and ill will between citizens.

"7. *Too great, a suspicious, or dangerous familiarity,* as well as having, almost unavoidably, to dwell together under the same roof.

"8. *Previous connection* with a relation by blood or by marriage, or with any other party under an impediment, and *pregnancy, with consequent legitimization of the offspring,* in order to provide for the well-being of the offspring and the good name of the mother, who would otherwise remain unmarried.

"9. *Disgrace* coming upon the woman arising from a suspicion that through over-familiarity with a relative or connection she had been seduced by him, although the suspicion should be false, in a case when unless she marries, a woman seriously defamed would either remain unmarried, or must marry beneath her, or serious loss would ensue.

"10. *Revalidating a marriage* which has been contracted in good faith, and publicly in the way prescribed by the Council of Trent, because its dissolution could hardly be brought about without grave public scandal and heavy loss especially on the woman's part. But if the parties have got married in bad faith, they by no means deserve the favor of a dispensation as the Council of Trent decides.

"11. *Danger of a mixed marriage,* or of its being cele-

brated before a non-Catholic minister. When there is danger of those wishful of being married, though connected in one of the closer degrees, going before a non-Catholic minister for the marriage in defiance of the authority of the Church, by reason of the refusal of a dispensation, there are just grounds for dispensing; for there is imminent danger not only of a most serious scandal to the faithful, but also of apostasy and loss of faith on the part of those so doing and disregarding the impediment to matrimony, especially in countries where heresy flourishes unchecked. The same must be said in the case of a Catholic woman who ventures upon marriage with a non-Catholic man.

"12. *Danger of incestuous concubinage.*

"13. *Danger of a civil marriage.* From what has been said, it follows that probable danger of those who are petitioning for the dispensation having only a civil marriage, as it is called, if they can not get the dispensation, is a lawful reason for dispensing.

"14. *The removal of grave scandal.*

"15. *Putting a stop to open concubinage.*

"16. *Merit,* that is in the case of one who has by resisting the enemies of the Catholic faith, or by generosity toward the Church, or by his learning, virtue, or some other means, deserved well of religion.

"Such are the more common and strong grounds which are usually brought forward when matrimonial dispensations are to be petitioned for; and theologians and canonists treat of them exhaustively.

"But this instruction now turns to those points which, in addition to the grounds for obtaining the dispensation, must, whether by law, custom, or the practice of the curia, be expressed in the petition, or the dispensation becomes

null if the truth be kept back or what is untrue is advanced even in ignorance. These are:

"1. *The name* and *surname* of the petitioners must both be written down distinctly and clearly, without any abbreviation.

"2. *The diocese* of birth or of actual domicil. When petitioners have a domicil out of the diocese of their birth they can ask, if they please, that the dispensation should be sent to the ordinary of the diocese in which they are actually residing.

"3. *The species* (in its most determinate form) of the impediment, whether it is consanguinity or affinity, arising from lawful or unlawful connection; public morality (*honestas*) arising from espousals or the marriage ceremony; in the case of an impediment by reason of crime, whether it arose from murder of the party's spouse with the promise of marriage, or from such murder with adultery, or from adultery alone with the promise of marriage; in spiritual relationship, whether it is between a god-parent and the person baptized, or between a god-parent and one of the parents of the person baptized.

"4. *The degree of consanguinity or affinity* or morality (*honestas*) arising from a marriage ceremony, and whether it is a simple or mixed degree, the more remote as well as the less, together with the line, and whether it is direct or collateral; likewise, whether the petitioners are related by a double tie of consanguinity, both on the father's and mother's side.

"5. *The number of impediments;* for instance, is the consanguinity or affinity twofold or manifold; or is there affinity as well as relationship; or any other kind of impediment diriment or prohibitory.

"6. *Various circumstances*, such as whether the marriage is to be or has been contracted; if contracted, it must be stated whether this was done in good faith at least on one side, or with a knowledge of the impediment; likewise, whether it was after proclamation of banns and in accordance with the prescriptions of the Council of Trent, or whether with the view of more easily obtaining a dispensation; finally, whether it has been consummated, if in bad faith, at least on one side, or with knowledge of the impediment." [1]

The instruction required that mention be made of incest, if this crime had been committed between the parties who asked for the dispensation, but this obligation was abolished by a decree of the Holy Office, June 25, 1885.

4. It was stated above that as a rule the Holy See grants dispensations *in forma commissoria*. When the impediment is occult the commission to dispense the party laboring under the impediment is issued to the confessor. It will therefore be the confessor's duty to verify the allegations as far as possible and faithfully to observe all the conditions laid down in the papal rescript. The observance of the conditions expressed by such terms as, *Provided that*, *If*, or *the ablative absolute*, is necessary for the validity of the dispensation. Besides the conditions, certain things are also prescribed, such as the destruction of the rescript after it has been executed; but these matters do not affect the validity of the dispensation. One of the usual conditions is previous sacramental confession, which requires the hearing of the confession of the party, but not necessarily his absolution. If this clause is not in the rescript, it may be executed outside the confessional. No special

[1] Synods in English, p. 78.

form is prescribed for granting the dispensation, which may be done by word of mouth.

When the impediment is public the commission is issued to the ordinary of the parties or to the ordinary of the place where they live. After the ordinary has received the rescript he may delegate the verification of the clauses to the parish priest of the parties, and after this has been done he may grant the dispensation according to the terms of the rescript, and on being signed by the ordinary the dispensation will at once take its effect. The document or a copy of it should be sent to the parish priest, who will inform the parties that the dispensation has been duly granted.

When the bishop is able to grant the necessary dispensation, he ordinarily does so *in forma gratiosa*. This signifies that on receipt of the petition and having satisfied himself of the truth of the allegations contained in it, he grants the dispensation forthwith by signing a document drawn up in due form, and sends it to the parish priest, who will inform the parties of the terms on which it has been granted.

CHAPTER XIII

REVALIDATION OF MARRIAGE

1. When marriage has been contracted invalidly the ordinary thing to do is to secure its being contracted validly, if this is possible. It may have been invalid on account of clandestinity, or for want of consent, or because there was some diriment impediment between the parties.

When the marriage was invalid on account of clandestinity, it must be revalidated by supplying the defect and contracting marriage anew before the parish priest and two witnesses. If the invalidity of the first marriage was known publicly, the second must be publicly solemnized; otherwise it will be sufficient to contract it in private.

2. When the first marriage was invalid for want of consent of both the contracting parties, the only way of revalidating it is by both renewing their consent. This, again, should be done publicly if the invalidity of the former marriage was matter of public knowledge; in other cases it will be sufficient to renew consent in private. When the former marriage was invalid for want of consent of only one of the parties, it will be sufficient if this party after becoming acquainted with its invalidity freely renews his consent. This may be done validly not only by express word of mouth, but by living together as man and wife, and exhibiting the ordinary signs of matrimonial union.

3. When the first marriage was invalid on account of some diriment impediment between the parties, the first

thing to do is to remove the obstacle to marriage by obtaining a dispensation from the impediment and duly executing it. If both the parties were aware of the impediment, they must renew their consent either in public or in private, according as the nullity of the marriage was publicly known or not.

If only one of the parties was aware of the impediment and it was such as to affect that party alone directly, as does, for example, the impediment of difference of worship, after the dispensation has been procured and executed it will be sufficient if the Catholic party renews his consent explicitly or implicitly by living in matrimonial union. The consent of the other party was valid as expressed in the first instance and it is continually renewed by living in marriage. When impediments like those of consanguinity and affinity equally affect both parties though only one of them is aware of it, as a general rule the other party must be told of the nullity of the previous marriage in order that both may express a valid consent together. This is ordinarily required by a special clause inserted in dispensations granted in such cases, when it can be done without grave inconvenience. Sometimes, however, this can not be done openly, and then it will be sufficient if, without indicating the real ground of nullity, the party who knows of the impediment induces the other to renew his matrimonial consent independently of the former consent which was invalid.

Sometimes not even this can be done, and in such cases of special difficulty recourse may be had to a dispensation *in radice*, as it is called, by which the Holy See sometimes revalidates a marriage without any renewal of consent by the parties. By a dispensation *in radice* the diriment

impediment which existed is removed, the marriage is validly contracted by the consent which was given in the former marriage and which still subsists, and the children, if any have been born, are legitimized as if the former marriage had been valid. By a fiction of law, the former marriage is held to be valid and to have all the effects of a valid marriage.

It is obvious that to enable the Church to do this the impediment must be of merely ecclesiastical origin, and so capable of being removed by the Church; the consent given in the former marriage must of itself be valid and capable of effecting a real marriage except for the impediment, and, moreover, the consent of the parties must still persist at the time when the dispensation is given, otherwise true marriage can never exist between the parties. If these conditions are fulfilled by a dispensation *in radice* without any renewal of consent, the parties will be truly married, and the effects of marriage will date from the first contract, though it was invalid.

NOTE. — The bishops of the United States have received the faculty *sanandi in radice* in Article 6, Form D, which is as follows: "*Sanandi in radice matrimonia contracta quando comperitur adfuisse impedimentum dirimens super quo, ex Apostolicæ Sedis Indulto, dispensare ipse possit, magnumque fore incommodum requirendi a parte innoxia renovationem consensus, monita tamen parte conscia impedimenti de effectu hujus sanationis.*" The authority of dispensing in matrimonial impediments may be exercised either with regard to a marriage to be contracted, or to a marriage already contracted, but invalidly on account of the existence of some diriment impediment. In the latter

class of cases a bishop may exercise his powers of dispensing in impediments so that the parties by mutual renewal of consent after the application of the dispensation would become validly married. This simple dispensation, as it is termed, may be granted by our bishops in the United States according to the limitations in Forms I, D, and E. The authority of granting a dispensation *in radice* is quite distinct, so that a bishop who can grant a simple dispensation may not have power to grant a dispensation *in radice*. As a matter of fact many bishops have no such permanent power. They may apply to the Holy See in a particular case and be empowered to grant the *sanatio in radice* for that case without receiving any lasting or habitual power for other cases which may arise. The *sanatio in radice* is said to be "perfect," when neither of the parties who invalidly contracted renews the matrimonial consent; "imperfect" *sanatio* occurs when one of the parties is aware of the impediment and gives a new consent. This latter kind alone our bishops have the faculty of granting, as will be presently seen.

The faculty *sanandi in radice* as expressed above in Article 6, Form D, was for a long time the subject of considerable doubt and controversy, as is well known to the readers of the "American Ecclesiastical Review"; but much light has been thrown upon it from recent decisions of the Holy See, and especially from responses of the Holy Office (August 22, 1906) to questions proposed by the bishop of Covington.

1. By this faculty the bishops can grant a *sanatio in radice* in each ecclesiastical impediment in which by virtue of powers granted them under Forms I, D, and E they could grant a simple dispensation, as is clear from the words

"*super quo ex Apostolicæ Sedis Indulto, dispensare ipse possit.*" This power does not, however, authorize them to give a *sanatio in radice* whenever several diriment impediments, or one diriment impediment along with a reserved impediment, *e.g., mixta religio,* arises in a given case, as was declared to the bishop of Burlington by the S. C. of Propaganda (January 30, 1882). Just as the authority to dispense in any canonical impediment by simple dispensation does not imply the power of dispensing in several impediments which may exist together in a particular case, so neither does the power of giving a *sanatio in radice* for several impediments imply the power of giving a *sanatio in radice* when those impediments are found together. A bishop may, therefore, receive the cumulative power, as it is termed, to grant a "simple" dispensation, *i.e.,* for several existing impediments, without having the cumulative power to grant a *sanatio in radice.* Most of the bishops in the United States, if not all, possess the cumulative power as regards "simple" dispensation (see De Becker, 2d ed., p. 313), although this does not appear from any of the four Forms, I, C, D, and E, granted to them; while they do not appear to have any permanent faculty for granting a *sanatio in radice* cumulatively. The same author, De Becker (p. 372, n. 1), mentions that an American prelate asked the faculty but did not obtain it. However, the general principle, that the authority of giving a *sanatio in radice* for a given impediment does not avail when another impediment also exists, admits of some exceptions, as appears from an answer given by the Holy Office (August 18, 1897). The question was asked: "*Utrum concurrente aliquo impedimento dirimente secreto seu fori interni cum alio impedimento, sed publico, necessaria*

sit ad dispensationem specialis cumulandi facultas?" Response: "*NEGATIVE et detur Decretum* 31 *martii* 1872 *in Coimbaturen . . . quod sic se habet: SSmus Dominus declaravit generatim prohibitionem concedendi absque speciali facultate dispensationes quando in una eademque persona concurrunt impedimenta matrimonialia non extendi ad eos casus in quibus, cum impedimento natura sua publico, aliud occurrit impedimentum occultum seu fori interni.*"

2. The foregoing faculty (Article 6) extends to all the canonical impediments for which the power of dispensing was granted to all bishops under the decree of February 20, 1888. Under this decree all ordinaries were empowered to dispense in any ecclesiastical impediment, except priesthood and affinity in *linea recta ex copula licita,* when the parties to be dispensed had been living in concubinage or had contracted a civil marriage, provided that one of the parties was so sick as to be in very great danger of death, "*ægrotos in gravissimo mortis periculo constitutos,*" and provided also that there was no time to have recourse to the Holy See for such dispensation. That by Article 6 the bishops of the United States possess the power of dispensing *in radice* under the circumstances just mentioned, is evident from the answer of the Holy Office (August 22, 1906) to the first *quæsitum* proposed by the bishop of Covington: "*Quomodo intelligi debet expressio 'Super quo, ex Apostolicæ Sedis Indulto, dispensare possit'? Utrum nempe solos casus Indultorum quinquennalium (seu particularium) contineat, an etiam omnes casus Indulti generalis a Rom. P. Leone XIII omnibus Ordinariis concessi die* 20 *Feb. a.* 1888 *quoad concubinarios, quorum unus versatur in periculo mortis adeo ut, vi prædictæ facultatis Episcopi sanare valeant in radice omnia matrimonia pro quibus reliqui Ordinarii facultatem*

habent simplicem concedendi dispensationem, supposito utique quod adsit species seu figura quædam matrimonii." The answer was: "*Facultatem Art.* 6, *formulæ D, extendi posse ad casus Indulti diei* 20 *Febr.* 1888, *servatis ejusdem Indulti clausulis, facto verbo cum SSmo.*" It does not, however, follow from this answer that the bishops have the cumulative power of dispensing *in radice* in the impediments referred to in the decree of 1888, unless in the cases excepted by the decree of the Holy Office (August 18, 1897) cited above. It is not certain that the authority given by the decree of 1888 conveys any cumulative power, even for "simple" dispensations. For opposite opinions on this particular question, the reader may consult De Becker, p. 303 and 304: Wernz, "Jus Decretalium," vol. 4, n. 617, n. 67. The point here in controversy has not any practical importance for those who, like most, if not all the bishops of the United States, have received an *indultum cumulandi;* but as has been already remarked, this *indultum cumulandi* refers only to "simple" dispensations, not to dispensations *in radice.*

3. It is now quite certain that the *potestas sanandi in radice* conferred upon the bishops of the United States is not confined to occult impediments, as some writers erroneously held. There are two express declarations of the Holy See given for this country upon this question. The first was given to the bishop of Belleville on May 8, 1889. There was a case proposed, that of a Catholic having got married to an infidel before a civil magistrate without a dispensation in *disparitas cultus.* After this marriage, invalidly contracted, the Catholic party knows that the infidel consort will not accept the conditions required for obtaining a dispensation in *disparitas cultus* and asks for a *sanatio in*

radice. The question proposed under these circumstances was: "*An Episcopus utens facultatibus extraordinariis in formula D contentis sanare valeat in radice matrimonium in casu, an insistere ut a parte infideli pars Catholica separetur?*" Response: "*Ad primam partem dubii AFFIRMATIVE: hoc enim in casu ad partis Catholicæ spirituali saluti consulendum sanatio in radice indulgeri solet. Pars vero Catholica promittere debet se pro viribus curaturam observantiam legum ecclesiasticarum, conjugis infidelis conversionem ac Catholicam prolis educationem. Ad secundam partem: pendere ex circumstantiis particularibus.*" There is also a response of the Holy Office to the archbishop of Cincinnati (June 20, 1892) in a *dubium* he proposed regarding the validity of a *sanatio in radice* he had granted. The marriage had been invalid on account of *disparitas cultus* and the infidel party refused to fulfil the required conditions, while the Catholic party promised to do whatever could be done for the Catholic education of the offspring. "*Quatenus urgeret necessitas, consensus perseveret, et impositum fuerit matri onus baptismi et educationis prolis totis viribus curandæ potuisse uti facultatibus.*" In both cases there was question of a public impediment, *viz.*, *disparitas cultus,* which, though it may not happen to be commonly known as existing in a particular instance, is of its own nature public. Hence the power of dispensing *in radice* possessed by our bishops is not limited to occult impediments. This also is manifestly shown from the answer of the Holy Office to the bishop of Covington already quoted, in which it is declared that those who have the faculty in Article 6 can dispense *in radice* in all the impediments, for which the ordinaries throughout the Church received authority to grant a "simple" dispensation according to the decree of

1888. Many of those impediments are public in the theological sense of the term, such as consanguinity, affinity from lawful wedlock, etc.

4. There is another class of cases in which by Article 6 the bishops of this country can grant a dispensation *in radice, viz.*, when a marriage is invalid on account of a divine impediment and this impediment afterward ceases; the marriage may be validated from the time of the cessation of that impediment. There was a celebrated case called "*Casus Parisiensis,*" which was settled by the Sacred Penitentiary April 25, 1890. Two persons, one of whom was a Catholic female of the diocese of Paris, were validly married, but after a civil divorce was obtained she contracted a second marriage with a Catholic while the first husband was still living. After his death she strove to have her second marriage revalidated *coram Ecclesia;* but the husband refused, alleging that for him a civil contract was sufficient. Then she besought the Holy See to grant a *sanatio in radice*, which was conceded. Now under Article 6, Form D, a *sanatio in radice* can be effected under similar circumstances, when it appears that the consent of each consort persevered from the time that the matrimonial contract, which was invalid by reason of the impediment of *ligamen,* was entered into. This is apparent from a response of the Holy Office to one of the *dubia* proposed by the bishop of Covington in the decree of 1906 regarding the interpretation of Article 6. It was asked: "*Utrum adhuc sit locus facultati si ambæ quidem partes cognoscunt nullitatem matrimonii sed una earum adduci non potest ad renovandum consensum.*" The response to this question was: "*Negative, nisi constet verum datum fuisse consensum sub specie matrimonii et eumdem ex utraque*

parte perseverare." When, therefore, the condition here expressed is present, *i.e.*, the matrimonial consent continued by both parties, the faculty under Article 6 may be exercised. Some authors are of opinion that, in the consent given when the divine impediment still existed, there is a natural force which produced its effect as soon as that impediment ceased provided that there was no other diriment impediment existing; while others think that the consent originally given with the existence of the divine impediment possessed no force whatever, but that as soon as that impediment ceased, the parties could express matrimonial consent in words or by conjugal intercourse, which consent, although invalid from clandestinity or some other ecclesiastical impediment, could be cured by the action of the Church so that the marriage would become valid at the moment such action was applied without both parties being required previously to know of such proposed application.

5. It is now time to consider the restrictions placed upon the exercise of the faculty in Article 6. These are indicated in the words in which it is conveyed: "*Magnumque fore incommodum requirendi a parte innoxia renovationem consensus, monita tamen parte conscia impedimenti de effectu hujus sanationis.*" There are two conditions here set forth. The first is when a great difficulty or grave inconvenience would arise from requiring each party to renew consent; for instance, if one of the parties, when asked, would likely refuse to renew consent, or even if great dissension would be reasonably apprehended from inducing both to renew consent; otherwise the faculty could not be exercised. The second condition required for the exercise of this power is that before the *sanatio* is applied, one of the parties

should be aware of the impediment and of the *sanatio* to be exercised as well as of its effects. The necessity of this condition is clear from a response to the bishop of Covington in the decree of 1906. It was asked whether the faculty (Art. 6) could be exercised, "*si ambæ hic et nunc eam (nullitatem matrimonii) ignorant, dummodo postea una pars moneatur de sanatione obtenta ejusque effectu.*" The answer was, "*Negative.*"

From this answer it appears that if both parties be ignorant of the nullity of their marriage, this faculty can not be exercised, even though one of the parties be admonished of the *sanatio* having been applied and of the effect of the *sanatio;* in other words, one of the parties should be aware of the invalidity of the marriage previous to the exercise of the *facultas sanandi.* That this is the correct view, is manifest not only from the response of the Holy Office, but likewise from the very words of the faculty, "*monita tamen parte conscia impedimenti de effectu hujus sanationis.*" It is not, however, necessary that one of the parties should have been for a long time aware of the existence of the impediment or of the *sanatio* to be applied. This knowledge may have been obtained immediately before the act of validation takes place. Besides the two conditions just mentioned, there must of course be also present those conditions which are required for every dispensation *in radice,* even when granted immediately by the Sovereign Pontiff. These are: first, that a matrimonial consent was formerly given such as would have sufficed for a valid marriage, if no impediment existed; second, the continuance of this consent by each party until the act of revalidation takes place; third, that there be a grave reason for employing this extraordinary means of revalida-

tion rather than the ordinary means by simple dispensation and mutual renewal of consent; and fourth, that there be question of dispensing only in an ecclesiastical impediment.

6. When a priest is called upon to send a petition to the bishop for a *sanatio in radice,* he should send in writing a statement of the case, setting forth the impediment on account of which the marriage was invalid, whether the marriage was entered into with or without the knowledge of the diriment impediment by the contracting parties; also the reasons for a revalidation, such as scandal or danger of incontinence which would arise from a separation of the parties; impossibility or great difficulty in getting a renewal of consent from both parties. The bishop, if satisfied with the reasons, may pronounce the act of revalidation, which ought to be communicated to the party aware of the impediment and should be recorded in some document to be preserved.

In conclusion it may be remarked that this faculty *sancndi in radice,* like all the faculties called habitual, which are granted to bishops by the Holy See, such as the faculties contained in the Forms I, C, D, and E, can be validly exercised by the vicar-general, even without any special deputation for this end, since the vicar-general possesses all the habitual faculties granted to the bishop whose vicar-general he is; but for the licit exercise of such faculties the vicar-general is required to show due subordination to his bishop. See Decree of the Holy Office to the bishop of Covington, ad quintum. — END OF NOTE.

CHAPTER XIV

DE DEBITO CONJUGALI

1. Verba S. Pauli procemii locum teneant nobis hanc fœdam materiam breviter tractaturis: "Uxori," inquit Apostolus, "vir debitum reddat, similiter autem et uxor viro. Mulier sui corporis potestatem non habet, sed vir; similiter autem et vir sui corporis potestatem non habet, sed mulier. Nolite fraudare invicem, nisi forte ex consensu ad tempus, ut vacetis orationi; et iterum revertimini in idipsum, ne tentet vos Satanas propter incontinentiam vestram." [1]

Proinde non tantum licitus est usus conjugii sed alteri parti serio et rationabiliter petenti est ex justitia debitum sub gravi reddendum.

Quod quamvis sit certissimum admittuntur tamen causæ excusantes ab hac obligatione, ita ut nulla sit obligatio reddendi debitum quando reddi non possit sine periculo vitæ, morbi gravis, vel quando non rationabiliter petatur, ut ab amente aut ebrio, vel petatur nimis frequenter, ut si pluries in eadem nocte. Etiam semi-ebrio petenti videtur licitum, præsertim propter periculum gravium defectuum tum corporalium tum moralium in prole forte gignenda, debitum denegare nisi propterea timeantur rixæ, discordiæ, et incontinentia ex parte petentis.

[1] 1 Cor. vii. 3–5.

Dictum est in his circumstantiis nullam adesse obligationem debitum reddendi, imo per se illicitum esset debitum reddere cum proximo periculo vitæ vel sanitatis. Attamen si morbus esset diuturnus nec proxime tendens ad mortem, qualis est syphilis, permittitur sano debitum reddere cum periculo infectionis ad incontinentiam vitandam vel ad amorem conjugalem fovendam. Major difficultas habetur quando judicio medici proles gignenda morti esset matri. Tales vero casus non sunt facile admittendi, et quidem medici judicium de periculo vitæ facilius pronunciant eo quod mulieres illud aucupantes videant. Nisi igitur casus sit omnino specialis, tuto confessarius consilium mulieri tale judicium medici alleganti dabit ut viro placere studeat ac cum magna fiducia Deo se committat.

Quum conjuges sibi invicem debitum reddere teneantur, patet eos ad simul cohabitandum regulariter etiam teneri, nisi quando necessitas id non patitur vel quando ex mutuo consensu sine periculo incontinentiæ et sine scandalo aliter fit.

Conjugibus senibus vel debilibus qui sæpius copulam nonnisi imperfecte exercent non est denegandus usus matrimonii dummodo aliqua sit spes eos posse rite actum perficere.

2. Quid liceat quid non liceat conjugibus sequenti regula generali continetur: Quod utile est ad actum conjugalem exercendum licet; quod est contra prolis generationem vel tendit ad illam impediendam est graviter illicitum; quod non est contra prolis generationem, quamvis sit præter illam, saltem non est graviter illicitum.

Unde resolves: Licet conjugi tactibus et aspectibus impudicis sese ad copulam excitare, et post vir se retractavit licet uxori tactibus se excitare ad delectationem

veneream completam. Copula sodomitica et copula incœpta sed abrupta cum effusione seminis extra vas mulieris graviter illicita est. Si autem experientia constat conjugibus se posse sine proximo periculo pollutionis copulam incœptam abrumpere, non videtur hoc esse mortale si uterque consentiat. A fortiori alii tactus et aspectus turpes sine proximo periculo pollutionis a conjugibus admissi non videntur mortalia, et ab omni peccato excusantur si ex justa causa exercentur, ut ad affectum conjugalem fovendum.

3. Peccatum grave contra naturam et finem matrimonii committit vir qui copula imperfecta sese voluntarie ab uxore retrahit et extra vas seminat. Ex facto Onan vocatur peccatum onanismus.[1]

Constat autem esse peccatum grave ex Sacra Scriptura ex eo quod frustratur finem principalem matrimonii, et tendit in ruinam generis humani. Constat etiam ex pluribus responsis SS. Congregationum. Moraliter nil refert quo medio peccatum hoc frustratæ naturæ committatur, sive instrumento quodam, sive involucro, sive lotione vasis mulieris post copulam, sive mere retractione viri ante seminationem. Si mutuo consilio et consensu conjugum tale quid fiat uterque graviter peccat.

Si tamen actus viri onanisticus uxori displiceat, quæ etiam eum inducere ad rem honeste perficiendam frustra tentavit, hæc non videtur prohibenda quominus debitum viro petenti reddat vel etiam ex gravi causa postulet. Ipsa enim materialiter tantum cum peccato viri cooperatur, quæ cooperatio ex gravi causa est licita. Habetur vero gravis causa tum ex parte viri ne offendatur, tum ex parte uxoris quæ cum periculo incontinentiæ non est privanda

[1] Gen. xxxviii. 9.

juribus suis maritalibus. Licet igitur mulieri etiamsi vir onanistice agat, veneree delectari in usu matrimonii, imo licet ei postquam vir sese retractavit excitare sese tactibus ad completam satisfactionem si hanc nondum sit experta.

Confessarii regulariter conjuges interrogare non debent de modo quo jura maritalia exerceant. Si tamen conjux dubia proponat de liceitate onanismi confessarius doctrinam Catholicam breviter ei declarare debet. Imo si suspicionem fundatam habet conjuges sive bona sive mala fide onanistice agere eos monere debet, cum de gravi peccato valde nocivo ipsis conjugibus et societati humanæ agatur. Conjux qui doctrinæ Catholicæ de hac re acquiescere nolit per se absolutionis est incapax.

4. Dummodo copula rite perfici possit nullus situs in ea exercenda graviter est illicitus, et situs non naturalis cohonestatur ita ut ne venialiter quidem sit illicitus dummodo justa aliqua causa habeatur.

Vetere lege accessus ad uxorem prohibebatur menstruorum et purgationis tempore, imo antiqua lege ecclesiastica similis vigebat prohibitio. Videtur dicendum illas leges esse positivas nec amplius Christianos obligare. Variæ sunt Doctorum sententiæ circa liceitatem talis accessus. Rationes quas afferebant plures ut actus illiceitatem demonstrarent fabulis nitebantur, attamen scientia physiologica comprobat sententiam juxta quam ob statum nerveum mulieris menstruorum et purgationis tempore sub veniali saltem est viro abstinendum nisi justa causa excusat. Idem dicendum videtur de tempore prægnationis, imo si esset copula periculo proximo abortus sub gravi tunc esset abstinendum. Vix tamen constare potest de tali periculo unde obligatio abstinendi urgeri non valet.

Probabilis videtur sententia plurium juxta quam tactus

impudici quos conjux secum exercet altera parte absente dummodo nullum sit periculum proximum pollutionis non sunt peccata mortalia. Ipse status matrimonialis, aiunt, reddit tales actus minus indecentes, ita ut quod apud solutos sit grave, apud conjugatos sit tantum veniale.

Nec delectatio morosa de copula habita vel habenda, secluso iterum periculo proximo pollutionis, videtur sub gravi conjugibus prohibita. Imo delectatio mere rationalis de objecto licito, qualis est copula conjugibus, ne veniale quidem esset; attamen practice delectatio de actu conjugali vix mere rationalis esse poterit, quatenus naturaliter excitat sensus et membra. Unde delectatio morosa de copula habita vel habenda sub veniali saltem regulariter etiam conjugibus prohibetur.

Copulam cum conjuge exercere cum mente adulterina, cogitando de alia persona præter conjugem, grave est peccatum propter mentem adulterinam.

BOOK IX

CENSURES

PART I

CENSURES IN GENERAL

CHAPTER I

THE NATURE OF AN ECCLESIASTICAL CENSURE

1. WE HERE understand by a censure a spiritual and remedial penalty by which a baptized and contumacious delinquent is deprived by ecclesiastical authority of the use of certain spiritual advantages. It differs from other penalties, such as degradation, which are also spiritual and inflicted by the Church, in that a censure has in view the correction and amendment of the delinquent, while other penalties have chiefly in view the common good to be procured by the punishment and repression of crime. The Church has jurisdiction only over those who are baptized, and she punishes by censures only those of her children who have done wrong with their eyes open, with knowledge of the wrongfulness of their action and of the spiritual censure by which the Church punishes it.

A censure does not and can not deprive a man of all the spiritual advantages which he may possess. There are some spiritual gifts in man's possession which depend only on his personal relations with God, such as sanctify-

ing grace, and the supernatural virtues and gifts which accompany it. These may adorn the soul of one who is not baptized, and they are not possessed by all members of the Church. There are, however, other spiritual privileges which a Christian enjoys through membership with the Church of God. Among these theologians distinguish those that are internal, external, and mixed. Internal comprise the special providence and helps which God grants to the members of His Church because they belong to His Spouse who is continually interceding for them. External are the society and special charity which binds the members of the Church to each other. Mixed are the participation in the same sacraments and sacrifice, the common suffrages, satisfactions, and indulgences, which the children of the Church in communion with her enjoy. According to the common opinion, excommunication deprives the delinquent of all these privileges, it puts him outside the communion of the faithful, and consequently leaves him without the benefits of union. The other two censures, suspension and interdict, deprive him at least of some of those benefits, as of their nature they are limited in their effect. There are, however, some theologians who with Suarez deny that a censure deprives a man of the merely internal advantages which membership with the Church confers.

2. With reference to the effects produced by them, censures are of three kinds: excommunication, suspension, and interdict. With reference to the manner in which they are inflicted, they are said to be *a jure*, or *ab homine*. The former are imposed by a stable and permanent law, the latter by way of particular precept or sentence. Sometimes a censure is incurred by the very fact of committing

a crime, without any declaratory sentence of a judge; it is then said to be *latæ sententiæ*. Sometimes it needs the intervention of a judge and is said to be *ferendæ sententiæ*.

3. Certain conditions must be fulfilled in order that a censure may be incurred:

a. As it is a serious penalty, and a serious penalty can only be inflicted for a grave fault, a censure can only be incurred by one who has committed a mortal sin.

b. The Church does not judge of what is merely internal, and so the fault which is punished by censure must be grave externally as well as internally. A slight blow given to a cleric, which does not constitute a serious injury, does not involve excommunication incurred by those who violate the privilege of the canon, even though the act were accompanied with mortal hatred.

c. Penalties must be interpreted strictly, and therefore the crime which is punished by censures must be completed, not merely attempted.

d. Inasmuch as a censure is remedial and inflicted on the delinquent for his correction and amendment, it can not be incurred for a crime which is altogether past, and which has left no traces behind it. Sometimes suspension or interdict may be inflicted in punishment of such crimes, but then they are inflicted for a definite period, or forever, and become pure penalties, not censures.

e. There must be contumacy in order that a censure may be incurred, or, in other words, the delinquent must be conscious at the time that he is committing a crime which is punished by the Church by censure. It follows from this that a censure can not be inflicted *ab homine* by a particular sentence without previous admonition, and this should ordinarily be in writing so as to be capable

of proof. In censures inflicted *a jure* or *ab homine* by a general precept which is of the nature of a law, no special admonition is required, as the law itself is a sufficient admonition. Nor is an admonition necessary when suspension or interdict are inflicted by way of mere penalty.

4. It is of faith that the Church has the power of inflicting censures. It is contained in the general power of binding and loosing granted to the Church by her divine Founder. This power is exercised by all ecclesiastical prelates who have jurisdiction in the external forum, unless their authority has been restricted. The Pope and a general council have jurisdiction over the whole Church, and they can bind all the faithful by their laws and censures. A bishop or his vicar-general can inflict censures on their subjects, as can regular prelates on theirs. A parish priest has no jurisdiction in the external forum, and can not as such impose censures, nor can laymen, nor women.

A bishop can not lawfully exercise contentious jurisdiction outside his diocese, and consequently he can not inflict censures outside his diocese when the case requires a judicial process. If the case does not require any judicial process, he may impose a censure on a guilty subject even when he is outside his diocese.

A bishop within his diocese may punish with censure a subject who is now outside the diocese on account of a crime which was committed within the diocese, and even on account of a crime which has been committed outside if it had reference to the diocese. And so a parish priest who is absent from the diocese and refuses to come to synod, or who is taking too long a holiday, may be punished by censure. The more probable opinion holds that a sub-

ject who violates a precept imposed under censure while he is outside the diocese incurs the censure, though St. Alphonsus admits that the opposite is probable. The jurisdiction of Superiors over regulars is personal, and these certainly incur censures imposed on them wherever they may be at the time when it is imposed. Regulars belonging to mendicant Orders and members of the Society of Jesus have a special privilege granted by the Holy See, by which they can not be put under censure by any bishop, even when they do wrong in matters in which their general exemption is of no avail, and in which they are subject to the bishop. In three cases, however, these Religious may be punished by episcopal censure, notwithstanding their special privilege. Gregory XV permitted this in case they preach in churches not their own without the bishop's license, or in their own without asking for his blessing, or against his command; Innocent X added to this the case of disobedience with reference to hearing confessions; and Urban VIII added the case of hanging sacred pictures painted in an unusual or scandalous manner.

5. In order to incur a censure, the delinquent must be subject to the authority which imposes it. Strangers, therefore, do not incur the particular censures which bind in the place where they are staying for a short time. If strangers, however, violate some provision of the common law which for such violation imposes a censure *ferendæ sententiæ,* the bishop of the place may inflict this on them. Even when they offend in other matters, the local ordinary may punish them by other penalties, and if they prove contumacious, they may be put under censure by him.

For one and the same crime a delinquent only incurs one censure of several, which may perhaps have been

inflicted by the same authority. Thus one who teaches an heretical proposition which has been condemned by the Holy See under pain of excommunication, incurs the censure specially reserved to the Pope, but not that also which is simply reserved to the Pope by the constitution *Apostolicæ Sedis*. On the other hand, a delinquent may incur several censures for the same crime imposed by different authorities, just as he may be punished by several censures for different crimes or for repetitions of the same.

6. Grave fear and ignorance prevent contumacy, and therefore hinder one who commits a crime under their influence from incurring any censure by which such crime is punished. If, however, the ignorance be crass or supine, it will not excuse from grave sin or contumacy, and so the censure will be incurred. But if the censure is inflicted on those who *knowingly, rashly, with rash daring,* or *presumption,* commit a crime, full knowledge is required in order to incur the censure, and not only crass but probably even affected ignorance will prevent its being incurred.

CHAPTER II

ABSOLUTION OF CENSURES

1. WHEN a censure has been incurred, it does not cease as a rule merely by lapse of time or on the correction and amendment of the delinquent. The delinquent must obtain absolution of the censure from one who is competent to give it. In some cases, however, a censure is imposed as long as certain conditions last, and then on the termination of those conditions the censure lapses without absolution. Thus by the decree of the Congregation of Bishops and Regulars (November 4, 1892), regulars in sacred Orders who are expelled or dismissed by their Superiors remain suspended until the Holy See provides for them, and they find a bishop to receive them.

Any confessor may absolve from censures inflicted by law and not reserved to the Holy See or to the bishop. Censures, too, which are imposed *ab homine* but by a general precept or ordinance are in the same category, and may be absolved by any confessor unless they are reserved..

Absolution for a reserved censure must be sought from him to whom it is reserved, or from his delegate. Similarly, absolution from a censure inflicted *ab homine* by a particular precept must be obtained from him who inflicted it, or from his superior, or successor in office, or from some one delegated by one of these to grant absolution.

Bishops and priests with missionary faculties in missionary countries receive the amplest powers to absolve from almost all censures that are inflicted by the common law of the Church, even though many of them are *per se* reserved to the Holy See or to the bishops. As we saw in the Book on Penance, two cases, the attempted absolution of an accomplice in a grave sin of impurity and the false accusation of solicitation, are generally excepted, and in a more special way reserved to the Holy See.

When a general faculty to absolve from censures is granted, it will avail both for the external and for the internal forum. If it is granted only for the internal forum, of itself it is of no avail for the external. Absolution granted for the internal forum will remove the censure as far as the relations between the soul and God are concerned, and it may also reconcile the delinquent with the Church and thus serve for the external forum as well, if the prelate to whom the case belongs is willing so to accept it, and there is no scandal to be repaired. If the case has been brought before the judge in the external forum, or if there is danger of this, one who has power to absolve only in the internal forum should not interfere.

2. Any cleric with ordinary or delegated jurisdiction for the case may absolve from a censure; neither priestly Orders nor episcopal approbation is required. Although absolution should ordinarily be given by word of mouth, and in presence of the delinquent, still it may validly be conveyed to one who is absent by letter. A censure may be removed even against the will of him who has incurred it, and sometimes even the dead are absolved that they may not be deprived of Catholic burial. A person under several censures may be absolved from one while he still

remains subject to the others, as the removal of one has no necessary connection with the removal of the rest. Absolution from censures should be given before absolution from sins, although if the order is inverted by mistake this would not affect the validity of the absolution. No special form is required for the validity of absolution from censures, but in the confessional the priest should make use of the ordinary form in the Ritual by which both censures and sins are absolved.

PART II

DIFFERENT KINDS OF CENSURES

CHAPTER I

EXCOMMUNICATION

1. OF ALL the penalties which the Church can inflict, excommunication is the most severe, and it virtually contains the others. It deprives the delinquent of all the advantages which he possessed as a member of the Church, and puts him outside the communion of the faithful. According to the ancient discipline of the Church, no excommunicated person could hold any intercourse with the faithful, nor could the faithful hold intercourse with him, but at the close of the Middle Ages, when heresy became more common, it grew to be impossible to maintain the ancient rigor, and Martin V introduced an important mitigation in the law. By the decree *Ad evitanda*, he distinguished between those under censure who were still to be avoided and those who were to be tolerated. All who were excommunicated by name, and at the same time specially denounced by name, together with all who notoriously violated the privilege of the canon by striking clerics, were still to be avoided; all others were to be tolerated. By this concession Catholics might without scruple, as far as concerned the censure, henceforth have intercourse with persons under censure who were tolerated. The concession was not, indeed, made directly in favor of

those under censure, but these could not fail to benefit indirectly by the relaxation in the law that had been granted to the faithful. The tolerated as well as those to be avoided were still theoretically subject to the former disabilities, but custom made a distinction between them in several important respects.

By the ancient discipline one of the faithful who held unlawful intercourse with one who was under excommunication himself incurred the minor excommunication, but this penalty has ceased to exist since the promulgation of the constitution of Pius IX, *Apostolicæ Sedis,* where no mention is made of it.

2. The effects of excommunication as mitigated by modern discipline may be enumerated as follows:

a. It deprives the excommunicated person of the use of the sacraments, sacramentals, and indulgences of the Church, so that whether tolerated or not he can not lawfully receive them, and if he does so unabsolved he commits grave sin.

b. It deprives at least those who are not tolerated of the public suffrages and prayers which the ministers of the Church offer in her name. To pray publicly in the services of the Church or to offer Mass publicly even for the tolerated except for their conversion seems still in general forbidden. Special exceptions, however, are sometimes made in favor of non-Catholic rulers. According to a very probable opinion it is allowed in private to offer Mass for those excommunicates who are tolerated, inasmuch as the decree of Martin V allowed Catholics to hold communion with them and so to offer Masses and suffrages for them. No one is forbidden, but rather all are urged to pray in private for the excommunicated.

c. An excommunicated priest can not lawfully administer the sacraments. However, in extreme necessity even one who is to be avoided may administer them, and one who is tolerated may do so if the faithful request it of him.

d. One who is to be avoided can not lawfully be present at the liturgical offices of the Church, but those who are tolerated are not only allowed by modern custom but even urged to come to Catholic services so that prejudice may be removed and they may be better disposed toward the Church.

e. Excommunication renders null and void presentation to a benefice or the conferring of an ecclesiastical dignity with jurisdiction annexed to it. It also makes one incapable of receiving the benefit of a papal rescript, and therefore such favors usually contain a clause absolving the recipient from any censure he may have incurred in order to secure the validity of the favor conferred on him.

f. One who is to be avoided as excommunicate can not hold any office in an ecclesiastical court. Roman law made him incapable of holding the office of judge or advocate, of being a witness, or even a guardian to a minor, or the executor of a will. Such disabilities are not recognized in modern civil legislation. A tolerated excommunicate was not *ipso facto* excluded from holding office in an ecclesiastical court, but legal exception might be taken to him.

g. An excommunicate who is to be avoided is deprived of all ecclesiastical jurisdiction both of the internal and of the external forum. One who is tolerated retains any jurisdiction which he possessed as long as he retains his title, but he can not lawfully exercise it except at the request of the faithful who are allowed to communicate with him.

h. Excommunication deprives a person of the right to ecclesiastical burial in consecrated ground. If, however, before death he gave signs of repentance, and of a wish to be reconciled with the Church, absolution may be given after death and the corpse may then receive Christian burial.

i. Those who were to be avoided as being under excommunication were also deprived of civil society and social intercourse. This prohibition of social intercourse was only binding under pain of venial sin, and many reasons of no great weight were held to excuse its violation even from venial sin. The conditions of modern society have increased and added weight to those excuses so that practically the prohibition of social intercourse and civil society with excommunicates has ceased to be of importance.

Beside the foregoing effects immediately produced by excommunication, there are others more remote. If the person under excommunication violates the censure by unlawfully and solemnly exercising sacred Orders, he incurs irregularity, and if after due admonitions he takes no steps to be released from the censure but remains in it for a whole year, he becomes suspect of heresy.

CHAPTER II

SUSPENSION

1. SUSPENSION is a censure by which a cleric is deprived of the use of some ecclesiastical power which he has by reason of his Orders, office, or benefice.

This censure, then, differs from the rest in that it is inflicted only on clerics whom it deprives of the lawful exercise of some portion or of the whole of the ecclesiastical power which they possess. A suspended priest may hear Mass and receive the sacraments, and he retains the Order or office from which he is suspended, but he can not lawfully exercise that Order or office as long as he is under censure.

Suspension may be partial, as when it deprives the delinquent of the exercise of some sacred Order, or office, or of the administration and fruits of his benefice; or it may be total and embrace all these ecclesiastical powers. When a cleric is simply suspended without any special limitation he is understood to be totally suspended from all sacred Orders, the exercise of his office, and the fruits of his benefice.

Suspension *ab homine*, inflicted for the perpetration of a crime, should ordinarily be imposed after the crime has been proved judicially. However, the Council of Trent [1] permitted prelates to suspend their clerics on account of

[1] Sess. xiv, c. 1, de ref.

a secret crime and without judicial process. If they use this right, they are said to suspend the delinquent *ex informata conscientia;* they are not bound to make known the grounds of their action to the delinquent himself, but they should be prepared to submit them to the Sacred Congregation if he have recourse to Rome, as he has a right to do, though he has no right to a strict appeal.[1]

Suspension inflicted for life, or for a crime which is altogether past and done with, or at the will and good pleasure of the Superior, is not a censure in the strict sense, but a mere penalty inflicted in punishment for crime.

2. A suspended person who exercises an act prohibited him by the censure commits grave sin, and if he solemnly exercises sacred Orders after being suspended from them he incurs the penalty of irregularity in addition. An act of jurisdiction on the part of one who is publicly suspended and who is not tolerated would be invalid; such an act on the part of one who is tolerated would always be valid, and even lawful if it were exercised at the request of the faithful who have the right to ask it of him.

[1] Instruct. S.C. de P.F., October 20, 1884.

CHAPTER III

INTERDICT

1. INTERDICT is a censure which prohibits the use of liturgical offices, some sacraments, and ecclesiastical burial. It differs from excommunication and suspension, even when the effects are similar, in that excommunication deprives the delinquent of the use of the sacraments, for example, inasmuch as that use is a communication with the faithful, and suspension deprives the delinquent of the exercise of ecclesiastical power in the administration of the sacraments, while interdict forbids their use inasmuch as they are sacred actions and objects of which for just reasons the delinquent is deprived.

An interdict is local, personal, or mixed, as the prohibition immediately affects the place, certain persons, or both.

It is general or special as it affects the whole of some country or body; or only some particular place or person, physical or moral.

It is total or partial as it deprives of liturgical functions, some sacraments, and ecclesiastical burial, or only of some of these spiritual advantages.

In spite of the prohibition of liturgical functions, these may be celebrated with open doors on certain more solemn festivals, provided that those whose crime was the occasion of the interdict do not approach the altar. Mass, too,

may be said during an interdict with closed doors in churches where the Blessed Sacrament is reserved, in order that it may be renewed for the needs of the sick.

The ordinary distribution of holy communion, the nuptial blessing, the ordination of clerics, and the administration of Extreme Unction are forbidden; the sacraments of Baptism, Confirmation, Penance, Marriage without the nuptial blessing, the Viaticum, and even Extreme Unction when another sacrament can not be administered, are not forbidden during an interdict.

Ecclesiastical burial may not take place in a consecrated cemetery which is under interdict, nor may interdicted persons be buried in consecrated ground.

2. The violation of an interdict by doing what it forbids is a grave sin, and a cleric who violates a personal interdict by the exercise of an action belonging to sacred Orders or who performs such an action in a place which is interdicted by name incurs irregularity. There are also certain other penalties inflicted for the violation of an interdict, as we shall see when treating of the constitution *Apostolicæ Sedis.*

CHAPTER IV

ECCLESIASTICAL PENALTIES

1. CERTAIN ecclesiastical penalties resemble censures in some respects, and it will be convenient to say a word about them here. Deposition is an ecclesiastical penalty by which a cleric as a punishment for grave crime is forever deprived of the exercise of his Orders, or of his office and the use of ecclesiastical jurisdiction, or of his benefice; or at the same time of the exercise of his Orders, of his office and jurisdiction, and of his benefice. It differs from a censure in that it is vindictive not remedial, and it does not endure merely until correction, amendment, and absolution; but of itself it is perpetual. The deposed cleric retains the privileges of the forum and of the canon.

2. Degradation is a more severe penalty than deposition, inasmuch as it reduces the cleric to the state of a layman as far as it is in the power of the Church to do, and deprives him of all clerical offices, rights, and privileges. Degradation is inflicted by the bishop in punishment of grave crimes committed by clerics who are incorrigible, by depriving them solemnly of their vestments and insignia of office, and handing them over to be dealt with by the secular arm.

3. Cessation from divine offices is ordered in a place in punishment for some grave crime that has been therein committed. It differs from a local interdict in that it

altogether forbids the administration of the sacraments except such as are necessary, liturgical functions, and ecclesiastical burial.

4. By ecclesiastical burial is meant interment in consecrated ground with the rites of the Church. All Catholics who die in communion with the faithful have a right to ecclesiastical burial. If there is no consecrated ground in which they can be buried, the grave in which they are placed is blessed at the time of interment. As far as possible, Catholics should have a special cemetery of their own or a portion at least of the common cemetery assigned to them exclusively. In this a part should be left unblessed for the reception of the bodies of unbaptized infants and of those to whom Christian burial is to be denied. These are either such as are deprived of ecclesiastical burial because they died out of communion with the faithful, or those to whom it is denied in punishment of crime.

To the first category belong all who are not baptized, open and public heretics, schismatics, apostates, and those under excommunication, for "with those with whom we have not communicated when alive we do not communicate when dead." [1]

To the second class belong suicides, unless they killed themselves while out of their mind, and this the Church readily presumes, those who have been killed in a duel, those who did not make their Easter duties, and open and public sinners. No Catholic, however, should be refused ecclesiastical burial without the sentence of the bishop.

Those also, who of their own free will chose to be cremated and persevered in this choice till death, are denied eccle-

[1] c. 12, de sepulturis.

siastical burial. The Church's rites may be performed at the house and in the Church in favor of those who are to be cremated by the wish of another, but no sacred rites are permitted at the crematorium.[1]

Although cremation in itself is not intrinsically wrong, yet the Church for good reasons forbids it, and it is gravely sinful for a Catholic to take a formal part in the cremation of the body of a Catholic.

[1] S.O. December 15, 1886.

PART III

SPECIAL CENSURES

CHAPTER I

THE BULL "APOSTOLICÆ SEDIS" WITH COMMENTARY

IN THIS part we will give the particular censures which are in force at the present day. Most of them are contained in the constitution *Apostolicæ Sedis,* issued by Pius IX, October 12, 1869, which it will be well to print in its entirety, adding a few notes by way of comment where they seem called for. We may warn the reader that the document is legal and highly technical, and that want of caution or knowledge may easily lead him to draw very wrong conclusions from the document.

CONSTITUTIO SANCTISSIMI D. N.

QUA

CENSURÆ LATÆ SENTENTIÆ LIMITANTUR

PIUS EPISCOPUS, SERVUS SERVORUM DEI, *ad perpetuam rei memoriam:*

Apostolicæ Sedis moderationi convenit, quæ salubriter veterum canonum auctoritate constituta sunt, sic retinere, ut, si temporum rerumque mutatio quidpiam esse temperandum prudenti dispensatione suadeat, Eadem Apostolica Sedes congruum supremæ suæ potestatis remedium ac providentiam impendat. Quamobrem cum animo Nostro iampridem revolveremus, ecclesiasticas censuras,

quae per modum latæ sententiæ, ipsoque facto incurrendæ ad incolumitatem ac disciplinam ipsius Ecclesiæ tutandam, effrenemque improborum licentiam coercendam et emendandam sancte per singulas ætates indictæ ac promulgatæ sunt, magnum ad numerum sensim excrevisse; quasdam etiam, temporibus moribusque mutatis, a fine atque causis, ob quas impositæ fuerant, vel a pristina utilitate atque opportunitate excidisse; eamque ob rem non infrequentes oriri sive in iis, quibus animarum cura commissa est, sive in ipsis fidelibus dubietates, anxietates, angoresque conscientiæ; Nos eiusmodi incommodis occurrere volentes, plenam earundem recensionem fieri Nobisque proponi iussimus, ut, diligenti adhibita consideratione, statueremus, quasnam ex illis servare ac retinere oporteret, quas vero moderari aut abrogare congrueret.

(*a*) Ea igitur recensione peracta, ac Venerabilibus Fratribus Nostris S. R. E. Cardinalibus in negotiis Fidei Generalibus Inquisitoribus per universam Christianam Rempublicam deputatis in consilium adscitis, reque diu ac mature perpensa, motu proprio, certa scientia, matura deliberatione Nostra, deque Apostolicæ Nostræ potestatis plenitudine, hac perpetuo valitura Constitutione decernimus, ut ex quibuscumque censuris sive excommunicationis, sive suspensionis, sive interdicti, quæ per modum latæ sententiæ, (*b*) ipsoque facto incurrendæ hactenus impositæ sunt, nonnisi illæ, quas in hac ipsa Constitutione inserimus, eoque modo, quo inserimus, robur exinde habeant; simul declarantes, easdem non modo ex veterum canonum auctoritate, quatenus cum hac Nostra Constitutione conveniunt, verum etiam hac ipsa Constitutione Nostra, non secus ac si primum editæ ab ea fuerint, vim suam prorsus accipere debere.

a. In doubt, therefore, this constitution must be interpreted strictly both because it deals with penalties and because the intention of the maker of the law was to limit, not to increase, the number of censures.

b. So that the constitution does not affect censures which are *ferendæ sententiæ*, nor of course those which belong to the special law of particular provinces, dioceses, or Religious Orders, but to the common law of the Church.

Each of the censures which follow is a law which prohibits the act of which it treats under pain of incurring the censure inflicted.

Excommunicationes Latæ Sententiæ Speciali Modo Romano Pontifici Reservatæ

Itaque excommunicationi latæ sententiæ speciali modo Romano Pontifici reservatæ subiacere declaramus:

I. Omnes a christiana fide apostatas, et omnes ac singulos hæreticos, quocumque nomine censeantur, et cuiuscumque sectæ exsistant, eisque credentes, eorumque receptores, fautores, ac generaliter quoslibet illorum defensores.

Speciali modo. — The censures in the first list are specially reserved because they can not be absolved by such as have only a general faculty to absolve from cases reserved to the Pope, nor by bishops when they are occult by virtue of the Chapter *Liceat,*[1] and those who are absolved in danger of death from these censures are bound in case of recovery afterward to present themselves before the Holy See and accept its commands.

Apostatas. — Apostates are those who altogether fall

[1] Trent, sess. xxiv, c. 6, de ref.

away from the Catholic Faith whether they profess any other form of religion or not.

Hæreticos. — Heretics in this connection are those only who sinfully, internally and externally, reject some dogma proposed by the Church to be believed, though they know fully well that it is so proposed.

Credentes. — Those who express their belief that some false doctrine of heretics is true, or that in general apostates and heretics teach the truth.

Receptores. — Harborers of heretics, as such, to prevent them from being detected or punished.

Fautores. — Fautors of heretics are those who afford them help and assistance in matters touching their heresy.

Defensores. — Defenders of heretics are such as by word, in writing, or by deed defend their heretical teachings or their persons from capture and punishment.

II. Omnes et singulos scienter legentes sine auctoritate Sedis Apostolicæ libros eorundem apostatarum et hæreticorum hæresim propugnantes, nec non libros cuiusvis auctoris per Apostolicas litteras nominatim prohibitos, eosdemque libros retinentes, imprimentes, et quomodolibet defendentes.

Scienter. — Full knowledge of this law and of the fact of transgression is required in order to fall under this censure. Crass, and probably even affected ignorance will excuse from the censure.

Legentes. — Reading, not hearing, is forbidden under censure, and the quantity read must be considerable with reference to the intention of the law which is to preserve the purity of the Faith.

Libros. — A newspaper, pamphlet, or sermon, is not a book. Periodicals, however, come under the law.

Propugnantes. — To fall under this censure it is not sufficient if the book merely contain heresy; it must undertake the defence of heresy by arguments.

Prohibitos. — Books that come under this clause must be forbidden not merely by a Roman congregation, but immediately by letters issued in the name of the Pope and mentioning them by name. Such a book is Fénélon's "*Explication des Maximes des Saints.*" They must be forbidden under pain of excommunication; some authorities say even under pain of excommunication reserved to the Holy See.

Retinentes. — Retaining for any purpose whatever without leave.

Defendentes. — Defending the book or its heretical doctrine by word, writing, or deed.

III. Schismaticos et eos qui a Romani Pontificis pro tempore exsistentis obedientia pertinaciter se subtrahunt vel recedunt.

Schismaticos. — Schismatics are those who refuse to be subject to the Roman Pontiff, the divinely constituted head of the Church, whether through mere malice or because they hold false opinions about the Church and Catholic doctrine, and thus separate themselves from the body of the Church, constituting themselves a new body or joining some other religious body already in existence.

Recedunt. — Even those whose act does not amount to schism, but who knowingly and wilfully withdraw themselves from obedience due to the Roman Pontiff and refuse to acknowledge his authority in some spiritual matter, incur this excommunication. One who continued to acknowledge the Pope's authority but refused to obey his commands on account of the difficulty of obedience,

or for some similar motive, would not incur this censure.

IV. Omnes et singulos, cuiuscumque status, gradus seu conditionis fuerint, ab ordinationibus seu mandatis Romanorum Pontificum pro tempore existentium ad universale futurum Concilium appellantes, nec non eos, quorum auxilio, consilio vel favore appellatum fuerit.

V. Omnes interficientes, mutilantes, percutientes, capientes, carcerantes, detinentes, vel hostiliter insequentes S. R. E. Cardinales, Patriarchas, Archiepiscopos, Episcopos, Sedisque Apostolicæ Legatos, vel Nuncios, aut eos a suis Diœcesibus, Territoriis, Terris, seu Dominiis eiicientes, nec non ea mandantes, vel rata habentes, seu præstantes in eis auxilium, consilium vel favorem.

VI. Impedientes directe vel indirecte exercitium iurisdictionis ecclesiasticæ sive interni sive externi fori, et ad hoc recurrentes ad forum sæculare, eiusque mandata procurantes, edentes, aut auxilium, consilium vel favorem præstantes.

Impedientes. — Hindering those who possess ecclesiastical jurisdiction from exercising it; this censure does not touch those who put obstacles in the way of the exercise of the power of Orders. It is done directly by threatening evil to those who have jurisdiction in case they use it, indirectly, when others connected with them are threatened, or pressure is brought to bear upon them but the object of it is not avowed.

Recurrentes. — Not only the foregoing, but also those who have recourse to the civil authority to hinder the exercise of ecclesiastical jurisdiction fall under this censure.

Præstantes. — "Giving help, counsel, or favor thereto" is by some limited to the last clause, "Procuring or issuing

its mandates;" by others it is extended to the other two clauses of the censure.

VII. Cogentes sive directe, sive indirecte iudices laicos ad trahendum ad suum tribunal personas ecclesiasticas præter canonicas dispositiones: item edentes leges vel Decreta contra libertatem aut iura Ecclesiæ.

Cogentes. — The Holy Office, January 23, 1886, explained that this censure only affected legislators and other authorities who, contrary to the law of the Church, where this is in force, compel lay judges to bring ecclesiastical persons before their tribunal as parties in a civil or criminal suit.

Edentes. — Those who are the authors of laws and decrees against the liberty and rights of the Church in the widest sense incur this censure. Makers of laws to expel Religious Orders from the country, or to hinder the clergy in the exercise of their functions of preaching, instructing, or administering the sacraments, fall under the censure.

VIII. Recurrentes ad laicam potestatem ad impediendas litteras vel acta quælibet a Sede Apostolica, vel ab eiusdem Legatis aut Delegatis quibuscumque profecta, eorumque promulgationem vel exsecutionem directe vel indirecte prohibentes, aut eorum causa sive ipsas partes, sive alios lædentes vel perterrefacientes.

Recurrentes. — Having recourse by petition or appeal or any other way to the civil authority and thus hindering the publication or execution of letters from the Holy See.

Acta. — Letters, acts, rescripts of grace or of justice, coming either immediately from the Pope or from his legates or delegates, or from the Roman congregations, are all comprised in this clause.

Prohibentes. — Hindering directly or indirectly their

promulgation and execution by having recourse to the civil authority, or, as some maintain, by any other means, for the law does not distinguish nor should we do so.

Lædentes. — Injuring or frightening those whose interest it is to have the letters or acts published and executed, because of those letters or acts.

IX. Omnes falsarios litterarum Apostolicarum, etiam in forma Brevis ac supplicationum gratiam vel iustitiam concernentium, per Romanum Pontificem, vel S. R. E. Vice-Cancellarios seu Gerentes vices eorum aut de mandato Eiusdem Romani Pontificis signatarum: nec non falso publicantes Litteras Apostolicas, etiam in forma Brevis, et etiam falso signantes supplicationes huiusmodi sub nomine Romani Pontificis seu Vice-Cancellarii aut Gerentis vices prædictorum.

X. Absolventes complicem in peccato turpi etiam in mortis articulo, si alius Sacerdos licet non adprobatus ad confessiones, sine gravi exoritura infamia et scandalo, possit excipere morientis confessionem.

This censure was explained in the Part on Penance.

XI. Usurpantes aut sequestrantes iurisdictionem, bona, redditus, ad personas ecclesiasticas ratione suarum Ecclesiarum aut Beneficiorum pertinentes.

Usurpantes. — Seizing as their lawful owner, not like a thief. Those who get possession of ecclesiastical property from those who seized it in the first instance do not incur this censure, but they fall under that inflicted by the Council of Trent,[1] which is placed below in the next series but one, p. 412.

Sequestrantes. — Judges or those who make use of a judge's authority to sequestrate jurisdiction, temporal

[1] Sess. xxii, c. 11, de ref.

or spiritual, property, or rents, belonging to ecclesiastical persons on account of their churches or benefices; not the ecclesiastical property belonging to hospitals, or to churches for the support of the fabric, etc., or to religious houses.

XII. Invadentes, destruentes, detinentes per se vel per alios civitates, terras, loca aut iura ad Ecclesiam Romanam pertinentia; vel usurpantes, perturbantes, retinentes supremam iurisdictionem in eis; nec non ad singula prædicta auxilium, consilium, favorem præbentes.

Invadentes. — Invading by armed force.

Destruentes. — Destroying wholly or in part.

Detinentes. — Detaining, whether they be the first invaders or their successors. *Per se vel per alios* refers to the three preceding words.

Pertinentia. — Belonging to the Roman Church, not to the Pope or to others as individuals.

Perturbantes. — By hindering the making or execution of laws, fostering rebellion, etc.

Jurisdictionem. — Exercising supreme authority in places belonging to the Church.

Præbentes. — Such as proximately co-operate with the foregoing by contributing money, influencing the people by their writings, etc. Civil officials holding office under the usurper do not fall thereby under the censure, as they are necessary for the preservation of public order.

Pius IX, by the constitution *Romanus Pontifex,* August 28, 1873, added another excommunication specially reserved to the Holy See to the foregoing. It affects: "1. Dignitates et Canonicos Cathedralium Ecclesiarum vacantium, ac illos qui deficientibus Capitulis Vicarios deputant (vacantis ecclesiæ), aut vacantes ecclesias legitime admin-

istrant, qui ante exhibitionem Litterarum Apostolicarum concedere et transferre in nominatum et præsentatum ad eandem Ecclesiam ejus curam, regimen, et administrationem sub quovis titulo, nomine, quæsito colore, ausi fuerint. 2. Nominatos et præsentatos ad vacantes ecclesias, qui earum regimen, et administrationem suscipere audent ex concessione et translatione a Dignitatibus et Canonicis, aliisque, de quibus supra, in eos peracta. 3. Necnon in eos qui præmissis paruerint, vel auxilium, consilium, aut favorem præstiterint, cujuscumque status, conditionis, præeminentiæ, et dignitatis, fuerint."

A quibus omnibus excommunicationibus huc usque recensitis absolutionem Romano Pontifici pro tempore speciali modo reservatam esse et reservari; et pro ea generalem concessionem absolvendi a casibus et censuris, sive excommunicationibus Romano Pontifici reservatis nullo pacto sufficere declaramus revocatis insuper earundem respectu quibuscumque indultis concessis sub quavis forma et quibusvis personis etiam Regularibus cuiuscumque Ordinis, Congregationis, Societatis et Instituti, etiam speciali mentione dignis et in quavis dignitate constitutis. Absolvere autem præsumentes sine debita facultate, etiam quovis prætextu, excommunicationis vinculo Romano Pontifici reservatæ innodatos se sciant dummodo non agatur de mortis articulo, in quo tamen firma sit quoad absolutos obligatio standi mandatis Ecclesiæ, si convaluerint.

Excommunicationes Latæ Sententiæ Romano Pontifici Reservatæ

Excommunicationi latæ sententiæ Romano Pontifici reservatæ subiacere declaramus.

I. Docentes vel defendentes sive publice, sive privatim

propositiones ab Apostolica Sede damnatas sub excommunicationis pœna latæ sententiæ; item docentes vel defendentes tamquam licitam praxim inquirendi a pœnitente nomen complicis, prouti damnata est a Benedicto XIV in Const. *Suprema* 7 Iulii 1745; *Ubi primum* 2 Iulii 1746; *Ad eradicandum* 28 Septembris 1746.

Docentes. — One who publicly or privately teaches, or publicly or privately defends, as not being worthy of condemnation, propositions which have been condemned by the Holy See under pain of excommunication falls under this censure. A catalogue of such propositions will be found in Lehmkuhl.[1] Some of these propositions are heretical and one who believed and taught them would incur the first excommunication of this constitution specially reserved to the Holy See, and not this. The censure would not be incurred for teaching or defending a proposition condemned by the Index, Holy Office, or a general council.

Complicis. — A confessor is as a rule forbidden to ask a penitent the name of a person with whom he has committed a sin. Any one who teaches or defends the practice of asking in confession the name of an accomplice and refusing absolution if the penitent will not disclose it, falls under this censure. It is here supposed that the action may sometimes be lawful according to what is generally laid down under the head of fraternal correction, and one who teaches that in those exceptional cases the confessor may ask the name of the accomplice does not of course incur this censure.

II. Violentas manus, suadente diabolo, iniicientes in Clericos, vel utriusque sexus Monachos, exceptis quoad

[1] vol. ii, n. 942.

reservationem casibus et personis, de quibus iure vel privilegio permittitur, ut Episcopus aut alius absolvat.

Violentas. — This signifies any serious injury by deed, not by word, against the cleric's person, liberty, or dignity.

Suadente diabolo. — An injury which is mortally sinful. The censure is not incurred when a cleric is struck without sin, as in self-defence, or for the sake of correction by parents or masters.

Clericos. — Any one who has received at least the tonsure.

Monachos. — Religious of both sexes, novices, lay brothers, and tertiaries, if they wear the habit and live in community.

Exceptis. — This clause only affects the reservation of the censure. Bishops could absolve a delinquent from this censure if the injury were of a less serious character, and even when it was serious if it was occult. Abbots could absolve their subjects who had incurred the censure unless the injury were very grave. These provisions of the law are now of less moment, especially in missionary countries, where confessors usually receive faculties to absolve from this censure, however it may have been incurred.

This censure guarantees the privilege of personal inviolability of the clergy and is called the *Privilegium canonis.*

III. Duellum perpetrantes, aut simpliciter ad illud provocantes, vel ipsum acceptantes, et quoslibet complices, vel qualemcumque operam aut favorem præbentes, nec non de industria spectantes, illudque permittentes, vel quantum in illis est, non prohibentes, cuiuscumque dignitatis sint, etiam regalis vel imperialis.

Duellum. — Duel is here to be taken in the strict and

technical sense of an unlawful fight with deadly weapons between two combatants by special arrangement as to time and place.

Acceptantes. — Not only those who actually fight the duel but those who send or accept a challenge to a duel which does not come off, fall under the censure.

Complices. — Accomplices are those who order or counsel a duel, or who act as intermediaries or seconds. All such and those who in any way assist in a duel are excommunicated. It is a moot point whether accomplices in a challenge or acceptance of a duel which is not fought come under the censure.

Spectantes. — Onlookers who have come for the purpose of seeing the duel, not mere passers-by who happen to see it, nor those who look on in secret from a distance.

Non prohibentes. — Military or civil authorities who permit or who do not prohibit duelling when they have the power to do so.

IV. Nomen dantes sectæ *Massonicæ*, aut *Carbonariæ*, aut aliis eiusdem generis sectis quæ contra Ecclesiam vel legitimas potestates seu palam, seu clandestine machinantur; nec non iisdem sectis favorem qualemcumque præstantes; earumve occultos coryphæos ac duces non denunciantes, donec non dedunciaverint.

Sectæ. — All who become Freemasons, or Carbonari, or members of any similar society which plots either openly or in secret against the legitimate government in Church or State, whether an oath of secrecy is exacted from the members or not, fall under this censure.

Præstantes. — All who favor them in any way, openly or in secret, directly or indirectly, physically or morally,

positively or negatively, by not repressing them when they ought and can do it.

Denunciaverint. — All who know the secret heads and leaders of such societies are bound to denounce them to the ordinary under pain of excommunication, and those who neglect this duty remain excommunicated until they make the denunciation, when the censure ceases.

There is no obligation to make the denunciation when the heads or leaders are publicly known, or when it would be useless, or when it would entail serious personal damage unless the public damage would be still greater from not making the denunciation.

NOTE. — For the benefit of American readers it may be well to make special reference to three societies condemned by the Church: the Knights of Pythias, the Odd Fellows, and the Sons of Temperance. These three societies were condemned August 20, 1894. Soon after this condemnation some bishops of the United States represented to the Holy See the grave pecuniary loss which many Catholic members of those societies would sustain from being obliged to sever all connection with them. Under the statutes of those societies the members were entitled in the event of sickness or grave necessity to receive aid, and in the case of death the family of the deceased member would receive a certain quota of assistance. Now many of the Catholic members had for a long time been paying assessments at stated times as a condition for membership and for the right to the foregoing advantages without, however, receiving anything in return for those payments. Could the Holy See permit the application of some remedy by which this serious loss would be prevented? If the Catholic mem-

bers would discontinue payment of their assessments, they, and not the society to which they belonged, would suffer the loss. Besides, it sometimes happens that members are legally bound by periodic instalments to discharge debt contracted by the society. The Holy See was therefore asked whether it would be lawful for Catholic members of any of those three societies to continue the payment of the required assessments or debt and to retain their names on the register of members. To this question the Cong. of the Holy Office answered (January 18, 1896) in the following terms: "*Generatim loquendo non licere: et ad mentem. Mens est quod ea res tolerari possit sequentibus conditionibus et adjunctis, simul in casu concurrentibus, scilicet:* 1. *Si bona fide primitus sectæ nomen dederit antequam sibi innotuisset societatem fuisse damnatam.* 2. *Si absit scandalum vel opportuna removeatur declaratione, id a se fieri ne jus ad emolumenta vel beneficium temporis in ære alieno solvendo amittat: a quavis interim sectæ communione et a quocunque interventu, etiam materiali, ut præmittitur, abstinendo.* 3. *Si grave damnum sibi aut familiæ ex renunciatione obveniat.* 4. *Tandem ut non adsit vel homini illi vel familiæ ejus periculum ullum perversionis ex parte sectariorum, spectato præcipue casu vel infirmitatis vel mortis: neve similiter adsit periculum funeris peragendi a ritibus Catholicis alieni.*" From this response it appears that, when certain conditions are found together in a given case, it may be tolerated for a member to continue the prescribed payments and retain his name on the register. The conditions are first, that the person was in good faith when he became a member, not aware of the society being under condemnation; second, that there be no scandal, or, if there be, that it should be removed by an opportune statement that the

object to be attained is not to lose the right to the emoluments nor to the time benefit in payment of debt, while the member must abstain from any communication with or participation in the society; third, that a grave loss would arise to the member or to his family from his renunciation of the society; fourth, that there be no danger of perversion to the member or his family from the sectaries, especially in the case of sickness or death, nor any danger of having a funeral at variance with the Catholic ritual. The Sovereign Pontiff Leo XIII approved and confirmed the Decree of the Holy Office, but besides ordered that, as the question was full of dangers and difficulties, and one which affected various ecclesiastical provinces, the Delegate-Apostolic of the United States for the time being should for the sake of uniformity make provision for particular cases, after the conditions given above would have been complied with. Hence if a Catholic member of one of those three societies should wish to procure the pecuniary advantages of members and for this purpose retain a certain sort of membership so far as to have his name kept on the register, a petition is to be sent to the Delegate-Apostolic at Washington, D.C., by the bishop, pastor, or confessor, setting forth the name of the member, when he joined the society, whether in good faith, etc., and asking that his name be retained in the register of the forbidden society. His Excellency is accustomed to send a reply granting the petition, provided that the statement made be correct and the conditions required by the Holy See be verified. Such passive membership is no obstacle to admission to the sacraments.

It is to be observed that it is only for the three societies named above that this concession has been made by the

Holy See, and that it is still prohibited *sub gravi* to join any of them. It is even held by some writers that those three societies are forbidden under pain of excommunication. Thus Putzer in his work on the "Apostolic Faculties" (n. 142) says of them, "*Censuris subjectæ esse videntur.*" Sabetti (n. 994, q. 6), on the other hand, holds, "*Non sunt damnatæ sub censura, sed solum quia sunt malæ.*" If it appear that these societies plot against the Church either openly or secretly, their members incur excommunication reserved to the Roman Pontiff, because the terms of the censure (n. 4, 2d tabella) are verified, "*Quæ contra Ecclesiam vel legitimam potestatem seu palam seu clandestine machinantur.*" It is on this point that the controversy turns, whether or not these societies can be said to conspire against the Church. Since no certain solution has been given to the question, it is to be held according to a general principle of censures that it is not incurred. The Holy See was asked regarding another secret society (the Independent Order of Good Templars), whether the excommunication against secret societies inflicted in the constitution *Apostolicæ Sedis* affected this society. The question was not definitely settled by the Holy Office, the answer being "*Dilata,*" but this Congregation declared that it was forbidden under pain of mortal sin to join that society. The Holy See has given no authoritative decision as to whether the three societies under consideration fall under censure; but since the Holy Office postponed a definite answer as to the excommunication inflicted on the Independent Order of Good Templars, there may be reason for holding that the excommunication does not affect the three societies, inasmuch as a concession of passive membership under certain conditions is made in favor of them

and not allowed for the Independent Order of Good Templars.

There are other societies in the United States about which doubt has arisen whether they are to be considered forbidden. According to a Decree of the Third Plenary Council of Baltimore (n. 255) a difficulty of this kind is to be settled by a commission of the archbishops, and, if the members should not agree, the question is to be referred to Rome. The same Plenary Council sets down (n. 247) two means or signs by which it may often be ascertained whether a particular society should be considered as forbidden. One sign is, when the society enjoins a secret to be kept so absolutely as not to permit any manifestation of it to ecclesiastical authority. The other sign is, when the society exacts an oath or promise of blind obedience. In either of these cases the society is to be held as forbidden, so that Catholics who become members of it are to be deprived of sacramental absolution until they renounce it actually or seriously promise to do so immediately. — END OF NOTE.

V. Immunitatem asyli ecclesiastici violare jubentes, aut ausu temerario violantes.

Immunitatem. — Immunity is a right belonging to sacred places, such as churches, chapels, cemeteries, religious houses, seminaries, bishops' palaces, and hospitals wherein there is a public chapel, so that those who take refuge there may not be taken away by force. Highway robbers, murderers, heretics, rebels, and others are excluded from the enjoyment of the privilege by law, and in many countries the privilege is still further restricted by concordats, while in others it is not recognized by the civil

authority at all, and even Catholics are obliged to act as if it did not exist.

Jubentes. — Those who knowingly and freely without compulsion violate ecclesiastical immunity or who command others to do so incur the censure. The two following censures were commented on in the first volume in connection with the religious vow of chastity.

VI. Violantes clausuram Monialium, cuiuscumque generis aut conditionis, sexus vel ætatis fuerint, in earum monasteria absque legitima licentia ingrediendo; pariterque eos introducentes vel admittentes, itemque Moniales ab illa exeuntes extra casus ac formam a S. Pio V in Constit. *Decori* præscriptam.

VII. Mulieres violantes Regularium virorum clausuram, et Superiores aliosve eas admittentes.

VIII. Reos simoniæ realis in Beneficiis quibuscumque, eorumque complices.

Realis. — In which the simoniacal contract is at least partially performed on both sides.

Beneficiis. — In buying or selling benefices, or in the collation, election, or presentation to benefices.

IX. Reos simoniæ confidentialis in Beneficiis quibuslibet, cuiuscumque sint dignitatis.

Dignitatis. — All prelates therefore, even cardinals, incur this censure if they are guilty of confidential simony.

X. Reos simoniæ realis ob ingressum in Religionem.

Ingressum. — Those who buy or sell admission to profession in a Religious Order incur this censure, not those who pay for their support during the novitiate, or even afterward.

XI. Omnes qui quæstum facientes ex indulgentiis aliisque gratiis spiritualibus excommunicationis censura plec-

tuntur Constitutione S. Pii V. *Quam plenum* 2 Ianuarii 1569.

Indulgentiis. — Offering indulgences or other spiritual favors, such as the faculty of choosing one's confessor, dispensations from abstinence, etc., in consideration for a sum of money.

XII. Colligentes eleemosynas maioris pretii pro Missis, et ex iis lucrum captantes, faciendo eas celebrari in locis ubi Missarum stipendia minoris pretii esse solent.

Colligentes. — The decree of the Sacred Congregation of the Council, *Ut debita*, May 11, 1904, *On what is to be observed and avoided in the satisfaction of manual Masses*, specially provides that this censure shall retain its full force.

XIII. Omnes qui excommunicatione mulctantur in Constitutionibus S. Pii V, *Admonet nos*, quarto Kalendas Aprilis 1567, Innocentii IX, *Quæ ab hac Sede* pridie nonas Novembris 1591, Clementis VIII, *Ad Romani Pontificis curam*, 26 Iunii 1592, et Alexandri VII, *Inter ceteras*, nono Kalendas Novembris 1660, alienationem et infeudationem Civitatum et Locorum S.R.E., respicientibus.

By the constitution of St. Pius V those are excommunicated who treat of or advise the granting in fief or alienating of cities and places belonging immediately to the Holy See. These terms are to be strictly interpreted and more probably would not affect those who should advise the Pope to surrender the temporal dominions of the Holy See to the Italian government.

XIV. Religiosos præsumentes clericis aut laicis extra casum necessitatis Sacramentum Extremæ Unctionis aut Eucharistiæ per viaticum ministrare absque Parochi licentia.

Religiosos. — Religious who are solemnly professed in an Order approved by the Pope, not others.

Præsumentes extra casum necessitatis.—Those, therefore, who administer the sacraments in case of necessity or what they think to be such do not incur the censure.

Laicis. — Except those who are *de familia.*

Viaticum. — To administer holy communion to the sick after they have received the Viaticum is not forbidden under pain of incurring this censure.

Parochi. — Some authorities maintain that where there are no parish priests but only missioners with the cure of souls, as in Great Britain and in the United States, there is no room for this censure, as it only punishes the violation of the rights of parish priests strictly so called.

XV. Extrahentes absque legitima venia reliquias ex Sacris Cœmeteriis sive Catacumbis Urbis Romæ eiusque territorii, eisque auxilium vel favorem præbentes.

Reliquias. — The bones or ashes of martyrs buried in the Catacombs, not other remains or souvenirs.

XVI. Communicantes cum excommunicato nominatim a Papa in crimine criminoso, ei scilicet impendendo auxilium vel favorem.

To incur this excommunication the person communicated with must be excommunicated by the Pope by name or denounced by him as already under excommunication; he who communicates with him must do so in the crime for which he incurred excommunication by giving him help or favor to enable him to persevere in his wickedness.

XVII. Clerici scienter et sponte communicantes in divinis cum personis a Romano Pontifice nominatim excommunicatis et ipsos in officiis recipientes.

Clericos. — Probably only the inferior secular clergy are comprised under this term when it is to be interpreted strictly as here.

Recipientes. — Admitting them to the performance of sacred offices, such as the celebration of Mass, the administration of the sacraments, public prayers, which clerics perform as ministers of the Church.

Excommunicationes Latæ Sententiæ Episcopis sive Ordinariis Reservatæ

Excommunicationi latæ sententiæ Episcopis sive Ordinariis reservatæ subiacere declaramus:

I. Clericos in Sacris constitutos vel Regulares aut Moniales post votum solemne castitatis matrimonium contrahere præsumentes; nec non omnes cum aliqua ex prædictis personis matrimonium contrahere præsumentes.

Votum solemne. — All who after taking a solemn vow of chastity presume to marry, and those who contract marriage with them, incur this censure.

II. Procurantes abortum, effectu sequuto.

Abortum. — Abortion is to be understood in the strict sense, not embryotomy or craniotomy or causing premature birth when the child is viable. To incur the censure the abortion must be directly intended, so that one who struck a pregnant woman and thus caused abortion, but without any intention of causing it, would not incur the censure. Some theologians are of opinion that the mother who procures abortion in herself is excused from this censure, inasmuch as she was excepted in the older legislation, and so may be supposed to be excepted in this constitution whose object is to limit the number of censures.

Note. — In some dioceses of the United States it is a reserved excommunication for the mother to cause abortion on herself. Hence whatever opinion one may hold on the

question, whether this case is reserved by the constitution *Apostolicæ Sedis* or by the bishop, a confessor before absolving such a mother should procure faculties from the bishop, unless he would have or procure them from the Holy See. — END OF NOTE.

III. Litteris apostolicis falsis scienter utentes, vel crimini ea in re cooperantes.

To the foregoing is to be added the following from the decree *Ut debita*, May 11, 1904, "*Qui statuta in præcedentibus articulis 8, 9, 10, et 11 quomodolibet aut quovis prætextu perfringere ausus fuerit . . . si laicus, excommunicationem latæ sententiæ episcopis reservata obstringetur.*" The acts hereby forbidden under pain of excommunication reserved to the bishop in the case of lay people are:

1. The giving of stipends for Masses to booksellers, merchants, managers of magazines and papers, and dealers in church furniture, or to any one else, for any other purpose except with the intention that the Masses should be said by them or their subjects if they be priests.

2. It is forbidden to separate the stipend from the saying of the Mass for which it is offered, or to exchange it for anything else, or to subtract anything from it, but it must be handed over wholly as it is to him who says the Mass.

3. It is forbidden to sell or buy books, church furniture, or anything else, or to pay for subscriptions to magazines and papers by means of stipends for Mass, whether the Masses are to be said or have already been said, whenever it is done habitually and furthers trade.

4. Without special leave of the Holy See, it is forbidden

to subtract anything from the stipends offered at celebrated shrines for the upkeep of such places.

The Third Plenary Council of Baltimore (n. 124) punished with excommunication reserved to the ordinary those under its jurisdiction who should dare to attempt to marry again after obtaining a civil divorce; as also (n. 127) those Catholics who should marry before a minister of any non-Catholic sect in any place subject to the prelates who were members of the Council.

Excommunicationes Latæ Sententiæ Nemini Reservatæ

Excommunicationi latæ sententiæ nemini reservatæ subiacere declaramus:

I. Mandantes seu cogentes tradi Ecclesiasticæ sepulturæ hæreticos notorios aut nominatim excommunicatos vel interdictos.

Those who order by public authority or compel by violence Catholics to bury in consecrated ground notorious heretics, or those who have been excommunicated by name, or publicly denounced as interdicted, incur this censure.

II. Lædentes aut perterrefacientes Inquisitores, denuntiantes, testes, aliosve ministros S. Officii; eiusve Sacri Tribunalis scripturas diripientes, aut comburentes; vel prædictis quibuslibet auxilium, consilium, favorem præstantes.

III. Alienantes et recipere præsumentes bona ecclesiastica absque Beneplacito Apostolico, ad formam Extravagantis, *Ambitiosæ* De Reb. Ecc. non alienandis.

Alienantes. — This term has here a wide signification

and means any act by which ownership is transferred, such as sale, mortgage, lease for a longer term than three years. It refers to administrators of ecclesiastical property.

Bona ecclesiastica. — Movable or immovable property which belongs to the Church and is considerable in amount. For the ordinary may alienate even real Church property up to the value of £15 or £20. Produce of ecclesiastical property may also be sold and what can not be kept without loss.

Absque beneplacito. — The leave of the Holy See and a good reason are required for the lawful alienation of Church property.

IV. Negligentes sive culpabiliter omittentes denunciare infra mensem Confessarios sive Sacerdotes a quibus sollicitati fuerint ad turpia in quibuslibet casibus expressis a Prædecess. Nostris Gregorio XV, Constit. *Universi* 20 Augusti 1622, et Benedicto XIV, Constit. *Sacramentum pœnitentiæ*, 1 Iunii 1741.

Præter hos hactenus recensitos, eos quoque quos Sacrosanctum Concilium Tridentinum, sive reservata Summo Pontifici aut Ordinariis absolutione, sive absque ulla reservatione excommunicavit, Nos pariter ita excommunicatos esse declaramus; excepta anathematis pœna in Decreto Sess. IV, *De editione et usu Sacrorum Librorum* constituta, cui illos tantum subiacere volumus, qui libros de rebus sacris tractantes sine Ordinarii approbatione imprimunt, aut imprimi faciunt.

Heic paulisper sistimus, ut inseramus excommunicationis pœnas, quas inflixit Tridentinum Concilium cum adiectis ab eo reservationibus, atque inde prosequemur exponere Constitutionem de qua agimus.

De usurpatoribus quorumcumque bonorum ecclesiasticorum aut iurium, quorum excommunicatio est Romano Pontifici a Concilio Tridentino reservata.

Sess. XXII, c. 11, de Reform: "*Si quem clericorum vel laicorum quacumque is dignitate, etiam imperiali aut regali, præfulgeat, in tantum malorum omnium radix cupiditas occupaverit, ut alicuius ecclesiæ seu cuiusvis sæcularis vel regularis Beneficii, montium pietatis, aliorumque piorum locorum iurisdictiones, bona, census ac iura etiam feudalia emphyteutica, fructus, emolumenta, seu quascumque obventiones, quæ in ministrorum et pauperum necessitates converti debent, per se vel alios vi vel timore incusso, seu etiam per supposita personas Clericorum aut Laicorum, seu quacumque arte aut quocumque quæsito colore in proprios usus convertere, illosque usurpare præsumpserit, seu impedire, ne ab iis ad quos iure pertinent, percipiantur, is anathemati tamdiu subiaceat, quamdiu iurisdictiones, bona, res, iura, fructus et redditus, quos occupaverit, vel qui ad eum quomodocumque, etiam ex donatione suppositæ personæ, pervenerint, ecclesiæ eiusque administratori sive Beneficiato integre restituerit, ac deinde a Romano Pontifice absolutionem obtinuerit . . . Clericus vero, qui nefandæ fraudis et usurpationis huiusmodi fabricator seu consentiens fuerit eisdem pœnis subiaceat. . . .*"

Excommunicatur Magistratus si ad instantiam Episcopi non præbeat auxilium adversus contradictores clausuræ monialium: itemque violantes earum clausuram.

Sess. XV, c. 5, de Reg.: "*Bonifacii* VIII *Constitutionem; quæ incipit,* Periculoso, *renovans Sancta Synodus, universis Episcopis sub obtestatione divini iudicii et interminatione*

maledictionis æternæ præcipit, ut in omnibus monasteriis sibi subiectis ordinaria, in aliis vero Sedis Apostolicæ auctoritate, clausuram sanctimonialium, ubi violata fuerit, diligenter restitui, et ubi inviolata est, conservari maxime procurent, inobedientes atque contradictores per censuras ecclesiasticas aliasque pœnas, quacumque appellatione postposita, compescentes, invocato etiam ad hoc, si opus fuerit, auxilio brachii sæcularis. Quod auxilium ut præbeatur, omnes Christianos Principes hortatur Sancta Synodus, et sub excommunicationis pœna ipso facto incurrenda, omnibus magistratibus sæcularibus iniungit."

Sess. XXV, ex cap. 5, de Reg., "*Ingredi autem intra septa monasterii nemini liceat, cuiuscumque generis aut conditionis, sexus vel ætatis fuerit, sine Episcopi vel Superioris licentia in scriptis obtenta, sub excommunicationis pœna ipso facto incurrenda.*"

Excommunicantur Raptores mulierum eorundemque consocii.

Sess. XXIV, ex cap. 6, de Reform Matr.: "*Decernit Sancta Synodus, inter raptorem et raptam, quamdiu ipsa in potestate raptoris manserit, nullum posse consistere matrimonium. Quod si rapta a raptore separata et in loco tuto et libero constituta illum in virum habere censuerit, eam raptor in uxorem habeat, et nihilominus raptor ipse ac omnes illi consilium, auxilium et favorem præbentes, sint ipso iure excommunicati. . . .*"

Excommunicantur qui libertatem matrimonii contrahendi violant.

Sess. XXIV, ex cap. 9, de Reform Matr.: "*Ita plerumque temporalium dominorum ac magistratuum mentis oculos*

terreni affectus atque cupiditates, excœcant, ut viros et mulieres, sub eorum iurisdictione degentes, maxime divites vel spem magnæ hereditatis habentes, minis et pœnis adigant cum iis matrimonium invitos contrahere, quos ipsi domini vel magistratus illis præscripserint. Quare, quum maxime nefarium sit Matrimonii libertatem violare et ab eis iniurias nasci, a quibus iura expectantur, præcipit Sancta Synodus omnibus, cuiuscumque gradus, dignitatis et conditionis existant, sub anathematis pœna, quam ipso facto incurrant, ne quovis modo directe vel indirecte subditos suos vel quoscumque alios cogant, quominus libere matrimonia contrahant."

Excommunicantur, qui cogunt mulierem ad ingrediendum monasterium, vel impediunt.

Sess. XXI, cap. 18, de Reg.: "*Anathemati Sancta Synodus subiicit omnes et singulas personas, cuiuscumque qualitatis vel conditionis fuerint, tam Clericos quam Laicos, sæculares vel regulares, atque etiam qualibet dignitate fungentes, si quomodolibet coegerint aliquam virginem vel viduam, aut aliam quamcumque mulierem, præterquam in casibus in iure expressis, ad ingrediendum monasterium vel ad suscipiendum habitum cuiuscumque religionis, vel ad emittendam professionem, quique consilium, auxilium vel favorem dederint, quique scientes eam non sponte ingredi monasterium aut habitum suscipere, aut professionem emittere, quoquo modo eidem actui vel præsentiam vel consensum vel auctoritatem interposuerint. Simili quoque anathemati subiicit eos, qui sanctarum virginum vel aliarum mulierum voluntatem veli accipiendi vel voti emittendi quoquo modo sine iusta causa impedierint.*"

Excommunicantur duellantes et reliqui, qui duellum quasi honestum spectaculum permittunt vel adiuvant, vel assistunt.

Sess. XXV, ex cap. 19, de Reform: "*Imperator, Reges, Duces, Principes, Marchiones, Comites et quocumque alio nomine Domini temporales, qui locum ad monomachiam in terris suis inter christianos concesserint, eo ipso sint excommunicati. Qui vero pugnam commiserint, et qui eorum patrini vocantur, excommunicationis . . . pœnam incurrant. . . . Illi etiam, qui consilium in causa duelli tam in iure, quam in facto dederint aut alia quacumque ratione ad id quemquam suaserint, nec non spectatores, excommunicationis ac perpetuæ maledictionis vinculo teneantur.*"

Excommunicantur qui sequentes falsas propositiones docent.

Sess. XIII, ex cap. 11, de Euchar.: "*Ne tantum Sacramentum* (Eucharistiæ) *indigne atque ideo in mortem et condemnationem sumatur, statuit atque declarat ipsa Sancta Synodus, illis, quos conscientia peccati mortalis gravat, quantumcumque etiam se contritos existiment, habita copia confessoris, necessario præmittendam esse Confessionem sacramentalem. Si quis autem contrarium docere, prædicare vel pertinaciter asserere, seu etiam publice disputando defendere præsumpserit, eo ipso excommunicatus existat.*"

Sess. XXIV, ex cap. 1, de Reform Matr.: "*Dubitandum non est, clandestina matrimonia, libero contrahentium consensu facta, rata et vera esse matrimonia, quamdiu Ecclesia ea irrita non fecit, et proinde iure damnandi sunt illi, ut eos Sancta Synodus anathemate damnat, qui ea vera ac rata esse negant, quique falso affirmant, matrimonia a filiis-*

familias sine consensu parentum contracta irrita esse, et parentes ea rata vel irrita facere posse."

Hæ sunt excommunicationes quas in rebus disciplinæ inflixisse Tridentinum Concilium reperimus.

Clement IX, by the constitution *Solicitudo*, July 17, 1669, forbade missionaries sent to the East Indies, or to North or South America, to trade by themselves or through others, under pain of excommunication, loss of active and passive voice, and the confiscation of the merchandise and gains. He ordered all gains made in such trading to be paid over to the ordinary and by him to be distributed among the poor. He declared all Superiors of Religious Orders or congregations to be subject to the same penalties if they neglect to punish their subjects who may be guilty of such unlawful trading. No delinquent can be absolved except when in danger of death unless restitution of the ill-gotten gains has been already made.

NOTE. — The censure here explained by the author is not contained in the constitution *Apostolicæ Sedis*, but was subsequently added (December 4, 1872) by the Holy See, and was declared to apply to the East Indies and to America. (See Coll. de Prop. Fide, n. 351.) It was extended to the Chinese missionaries by a Decree of the Holy Office (January 17, 1883). In this same decree it was declared that the excommunication affects not only missionaries from Europe, but any ecclesiastics who under the name of missionary or under any other title will be sent for a time to, or will tarry in one of the countries named in any manner whatsoever (*quomodolibet morabuntur*). A question of practical importance for the United States arises, *viz.*, whether the censure affects the clergy of this country,

secular and regular? There has been no exception made in regard to the United States, so that when we find the words, "*Missionariis quibuslibet in Indiis Orientalibus et America existentibus,*" mentioned in an encyclical of the S. C. of Propaganda (March 29, 1873) regarding the censure, we should infer the inclusion of the United States. It would, therefore, seem that the censure may be incurred in this country since it was applied by the Holy See to America generally. However, it is comparatively few of the clergy of the United States who could incur this censure. Those who are affiliated to a particular diocese, whether they came from Europe or any other country, do not seem to be affected; nor do those who, although not affiliated, have obtained some permanent position. Neither of these classes can be said *morari* in the sense of the decree. Those ecclesiastics may be guilty of grave sin by *negotiatio* or trading forbidden by the general law of the Church; but they would not incur the censure. Whether the same may be held of all other ecclesiastics who may be residing in this country, it is difficult to say with certainty. If they, having no permanent abode here, perform even once an act of trading in this country, it is not clear how they escape this censure. It may, however, be well to quote the opinion of Putzer (Apost. Fac. n. 140), who thinks that this censure has probably ceased in the United States, "*Quæ tamen in locis ubi Diœceses cum clero indigeno et stabiliter incardinato erectæ sunt, ut apud nos, probabiliter cessavit.*" If the censure has been incurred, the delinquent can not be absolved except *in articulo mortis* until he has made restitution of the acquired gains to the ordinary or vicar-apostolic. This is in accordance with the Decree of the Holy Office of 1883.

(See Coll. P. F. n. 352.) However, if the delinquent could not make restitution while he wished to make it, he could be absolved outside of danger of death by an ordinary confessor, as also when he has already made restitution. (Cf. Genicot, vol. 2, n. 612.) — END OF NOTE.

Sequitur modo SSmi Domini Nostri Constitutio, quam referre assumpsimus.

SUSPENSIONES LATÆ SENTENTIÆ SUMMO PONTIFICI RESERVATÆ

I. Suspensionem ipso facto incurrunt a suorum Beneficiorum perceptione ad beneplacitum S. Sedis Capitula et Conventus Ecclesiarum et Monasteriorum aliique omnes, qui ad illarum seu illorum regimen et administrationem recipiunt Episcopos aliosve Prælatos de prædictis Ecclesiis, seu Monasteriis apud eandem S. Sedem quovis modo provisos, antequam ipsi exhibuerint Litteras Apostolicas de sua promotione.

II. Suspensionem per triennium a collatione Ordinum ipso iure incurrunt aliquem ordinantes absque titulo Beneficii vel patrimonii cum pacto ut ordinatus non petat ab ipsis alimenta.

III. Suspensionem per annum ab Ordinum administratione ipso iure incurrunt ordinantes alienum subditum etiam sub prætextu Beneficii statim conferendi, aut iam collati, sed minime sufficientis, absque eius Episcopis litteris dimissorialibus, vel etiam subditum proprium, qui alibi tanto tempore moratus sit, ut canonicum impedimentum contrahere ibi potuerit, absque Ordinarii eius loci litteris testimonialibus.

IV. Suspensionem per annum a collatione Ordinum ipso

iure incurrit, qui, excepto casu legitimi privilegii, Ordinem sacrum contulerit absque titulo Beneficii vel patrimonii Clerico in aliqua Congregatione viventi, in qua solemnis professio non emittitur, vel etiam religioso nondum professo.

V. Suspensionem perpetuam ab exercitio Ordinum ipso iure incurrunt Religiosi eiecti, extra Religionem degentes.

By the decree S.C. EE. et RR., November 4, 1892: "Alumni votorum solemnium vel simplicium, perpetuorum vel temporalium, in sacris ordinibus constituti, qui expulsi vel dimissi fuerint perpetuo suspensi maneant, donec a S. Sede alio modo eis consulatur; ac præterea episcopum benevolum receptorem invenerint, et de ecclesiastico patrimonio sibi providerint. Qui in sacris ordinibus constituti et votis simplicibus obstricti, sive perpetuis sive temporalibus, sponte dimissionem ab Apostolica Sede petierint et obtinuerint, vel aliter ex apostolico privilegio a votis simplicibus vel perpetuis vel temporaneis dispensati fuerint, ex claustro non exeant donec episcopum benevolum receptorem invenerint, et de ecclesiastico patrimonio sibi providerint, secus suspensi maneant ab exercitio susceptorum ordinum. Quod porrigitur quoque ad alumnos votorum simplicium temporalium qui quovis professionis vinculo jam forent soluti, ob elapsum tempus quo vota ab ipsis fuerunt nuncupata."

VI. Suspensionem ab Ordine suscepto ipso iure incurrunt, qui eundem Ordinem recipere præsumpserunt ab excommunicato vel suspenso, vel interdicto nominatim denunciatis, aut ab hæretico vel schismatico notorio: eum vero, qui bona fide a quopiam eorum est ordinatus, exercitium non habere Ordinis sic suscepti, donec dispensetur, declaramus.

VII. Clerici sæculares exteri ultra quatuor menses in Urbe commorantes ordinati ab alio quam ab ipso suo Ordinario absque licentia Card. Urbis Vicarii vel absque prævio examine coram eodem peracto, vel etiam a proprio Ordinario posteaquam in prædicto examine reiecti fuerint; nec non Clerici pertinentes ad aliquem e sex Episcopatibus suburbicariis, si ordinentur extra suam diœcesim, dimissorialibus sui Ordinarii ad alium directis quam ad Card. Urbis Vicarium; vel non præmissis ante Ordinem sacrum suscipiendum exercitiis spiritualibus per decem dies in domo urbana Sacerdotum a Missione nuncupatorum, suspensionem ab Ordinibus sic susceptis ad beneplacitum S. Sedis ipso iure incurrunt: Episcopi vero ordinantes ab usu Pontificalium per annum.

Priests who violate the provisions of the decree S. C. C., May 11, 1904, with reference to stipends for Mass which were given above, incur suspension *a divinis* reserved to the Holy See; clerics who are not priests incur suspension from the Orders which they have received, and are made incapable of ascending to higher Orders.

In the province of Westminster, ecclesiastics who have received sacred Orders are strictly prohibited from being present at stage representations in public theaters, or in places temporarily made use of as public theaters, under the penalty to transgressors of suspension to be incurred *ipso facto*, such as has hitherto been the rule in all parts of England, with reservation to the respective ordinaries.

The same penalty enforces a still stricter law in Ireland; in Scotland and in the United States priests are forbidden to go to public theaters, but not under pain of censure.

Interdicta Latæ Sententiæ Reservata

I. Interdictum Romano Pontifici speciali modo reservatum ipso iure incurrunt Universitates, Collegia et Capitula, quocumque nomine nuncupentur, ab ordinationibus seu mandatis eiusdem Romani Pontificis pro tempore existentis ad universale futurum Concilium appellantia.

II. Scienter celebrantes vel celebrari facientes divina in locis ab Ordinario, vel delegato Iudice, vel a iure interdictis; aut nominatim excommunicatos ad divina officia, seu ecclesiastica sacramenta, vel ecclesiasticam sepulturam admittentes, interdictum ab ingressu Ecclesiæ ipso iure incurrent, donec ad arbitrium eius, cuius sententiam contempserunt, competenter satisfecerint.

Denique quoscumque alios Sacrosanctum Concilium Tridentinum suspensos aut interdictos ipso iure esse decrevit, Nos pari modo suspensioni vel interdicto eosdem obnoxios esse volumus et declaramus.

Heic iterum paulisper sistimus inserentes Suspensiones vel Interdicta a Concilio Tridentino lata, ut has canonicas censuras Lectores sub oculis habeant.

Suspenduntur vel interdicuntur qui variis modis violant canones de sacra Ordinatione.

Sess. XXIII, ex cap. 8, de Reform: "*Unusquisque autem a proprio Episcopo ordinetur. Quod si quis ab alio promoveri petat, nullatenus id ei, etiam cuiusvis generalis aut specialis rescripti vel privilegii prætextu, etiam statutis temporibus permittatur, nisi eius probitas ac mores, Ordinarii sui testimonio, commendentur. Si secus fiat, ordinans a collatione Ordinum per annum et ordinatus a*

susceptorum Ordinum exsecutione, quamdiu proprio Ordinario videbitur expedire, sit suspensus."

Sess. XXIII, ex cap. 14, de Reform: "*Cum promotis per saltum, si non ministraverint, Episcopus ex legitima causa possit dispensare.*"

Sess. VII, c. 10, de Reform: "*Non liceat Capitulis sede vacante, infra annum a die vacationis, ordinandi licentiam, aut litteras dimissorias seu reverendas, ut aliqui vocant, tam ex iuris communis dispositione, quam etiam cuiusvis privilegii aut consuetudinis vigore, alicui, qui Beneficii ecclesiastici recepti sive recipiendi occasione arctatus non fuerit, concedere. Si secus fiat, Capitulum contraveniens ecclesiastico subiaceat interdicto, et sic ordinati, si in minoribus ordinibus constituti fuerint, nullo privilegio clericali, præsertim in criminalibus gaudeant. In maioribus vero ab exsecutione Ordinum ad beneplacitum futuri Prælati sint ipso jure suspensi.*"

Sess. VI, cap. 5, de Reform: "*Nulli Episcopo liceat cuiusvis privilegii prætcxtu pontificalia in alterius diœcesi exercere, nisi de Ordinarii loci expressa licentia, et in personas eidem Ordinario subjectas tantum. Si secus factum fuerit, Episcopus ab exercitio pontificalium, et sic ordinati ab exsecutione Ordinum sint ipso jure suspensi.*"

Sess. XXIII, c. 10, de Reform: "*Abbatibus ac aliis quibuscumque, quantumvis exemptis, non liceat in posterum intra fines alicuius diœcesis consistentibus, etiam si nullius diœcesis vel exempti esse dicantur, cuiquam, qui regularis subditus sibi non sit, Tonsuram vel minores Ordines conferre; nec ipsi Abbates et alii exempti, aut collegia vel capitula quœcumque, etiam ecclesiarum cathedralium, litteras dimissorias aliquibus Clericis sæcularibus, ut ab aliis ordinentur, concedant. Sed horum omnium ordinatio, servatis omnibus,*

quæ in huius Sanctæ Synodi Decretis continentur, ad Episcopos, intra quorum dioecesis fines existant, pertineat; non obstantibus quibusvis privilegiis, præscriptionibus aut consuetudinibus etiam immemorabilibus. Pœnam quoque impositam iis, qui contra huius Sanctæ Synodi sub Paulo III. Decretum a capitulo episcopali sede vacante litteras dimissorias impetrant, ad illos, qui easdem litteras non a Capitulo, sed ab aliis quibusvis in jurisdictione Episcopi, loco Capituli sede vacante succedentibus, obtinerent, mandat extendi. Concedentes autem dimissorias contra formam Decreti ab Officio et Beneficio per annum sint ipso iure suspensi."

Sess. XIV, ex cap. 2, de Reform: "*Nemo Episcoporum, qui titulares vocantur, etiam si in loco nullius dioecesis, etiam exempto, aut aliquo monasterio cujusvis ordinis resederint, aut moram traxerint, vigore cujusvis privilegii sibi de promovendo quoscumque ad se venientes pro tempore concessi, alterius subditum, etiam prætextu familiaritatis continuæ commensalitatis suæ, absque sui proprii Prælati expresso consensu aut litteris dimissoriis, ad aliquos sacros aut minores Ordines vel primam Tonsuram promovere seu ordinare valeat. Contra faciens ab exercitio pontificalium per annum, taliter vero promotus ab exsecutione Ordinum sic susceptorum, donec suo Prælato visum fuerit, ipso iure sint suspensi.*"

Interdicuntur Episcopi, qui non denunciant Episcopos illegitime absentes.

Sess. VI, ex cap. 1, de Reform: "*Crescente vero contumacia* (Episcopi absentis ultra secundum semestre tempus) *ut severiori ss. canonum censuræ subiiciatur, Metropolitanus suffraganeos Episcopos absentes, Metropolitanum vero absentem suffraganeus Episcopus antiquior residens, sub pœna interdicti ingressus ecclesiæ eo ipso*

incurrenda infra tres menses per litteras seu nuncium Romano Pontifici denunciare teneatur."

Sess. XXIII, ex cap. 14, de Reform: "*Episcopi quoque, quod absit, si ab huiusmodi crimine* (concubinatus) *non abstinuerint, et a synodo provinciali admoniti, se non emendaverint, ipso facto sint suspensi.*"

Hactenus de Suspensionibus vel Interdictis a Synodo Tridentina inflictis. Sic autem prosequitur et explicit Constitutio Sanctissimi Patris de qua agimus.

Quæ vero censuræ sive excommunicationis, sive suspensionis, sive interdicti, Nostris, aut Prædecessorum Nostrorum Constitutionibus, aut sacris canonibus præter eas, quas recensuimus, latæ sunt, atque hactenus in suo vigore perstiterunt sive pro Rom. Pontificis electione, sive pro interno regimine quorumcumque ordinum et institutorum regularium, nec non quorumcumque collegiorum, congregationum, cœtuum locorumque piorum cuiuscumque nominis aut generis sint, eas omnes firmas esse, et in suo robore permanere volumus et declaramus.

a. Ceterum decernimus, in novis quibuscumque concessionibus ac privilegiis, quæ ab Apostolica Sede concedi cuivis contigerit, nullo modo ac ratione intelligi umquam debere, aut posse comprehendi facultatem absolvendi a casibus et censuris quibuslibet Romano Pontifici reservatis, nisi de iis formalis, explicita, ac individua, mentio facta fuerit: quæ vero privilegia aut facultates, sive a Prædecessoribus Nostris, sive etiam a Nobis cuilibet Cœtui, Ordini, Congregationi, Societati, et Instituto, etiam regulari cuiusvis speciei, etsi titulo peculiari prædito, atque etiam speciali mentione digno a quovis umquam

tempore huc usque concessæ fuerint, ea omnia, easque omnes Nostra hac Constitutione revocatas, suppressas, et abolitas esse volumus, prout reapse revocamus, supprimimus, et abolemus, minime refragantibus aut obstantibus privilegiis quibuscumque, etiam specialibus, comprehensis, vel non, in corpore iuris, aut Apostolicis Constitutionibus, et quavis confirmatione Apostolica, vel immemorabili etiam consuetudine, aut alia quacumque firmitate roboratis quibuslibet etiam formis ac tenoribus, et cum quibusvis derogatoriis, aliisque efficacioribus et insolitis clausulis, quibus omnibus, quatenus opus sit, derogare intendimus et derogamus.

b. Firmam tamen esse volumus absolvendi facultatem a Tridentina Synodo Episcopis concessam Sess. XXIV cap. 6, de Reform. in quibuscumque censuris Apostolicæ Sedi hac Nostra Constitutione reservatis, iis tantum exceptis, quas eidem Apostolicæ Sedi speciali modo reservatas declaravimus.

Decernentes has Litteras, atque omnia et singula, quæ in eis constituta ac decreta sunt, omnesque et singulas, quæ in eisdem factæ sunt ex anterioribus Constitutionibus Prædecessorum nostrorum, atque etiam Nostris, aut ex aliis sacris Canonibus quibuscumque, etiam Conciliorum Generalium, et ipsius Tridentini, mutationes, derogationes, ratas et firmas, ac respective rata atque firma esse et fore, suosque plenarios et integros effectus obtinere; sicque et non aliter in præmissis per quoscumque Iudices Ordinarios, et Delegatos, etiam Causarum Palatii Apostolici Auditores, ac S. R. E. Cardinales, etiam de Latere Legatos, et Apostolicæ Sedis Nuntios, ac quosvis alios quacumque præeminentia, ac potestate fungentes, et functuros, sublata eis, et eorum cuilibet quavis aliter iudicandi et interpretandi

facultate et auctoritate, iudicari ac definiri debere; et irritum atque inane esse ac fore quidquid super his a quoquam quavis auctoritate, etiam prætextu cuiuslibet privilegii, aut consuetudinis inductæ vel inducendæ, quam abusum esse declaramus, scienter vel ignoranter contigerit attentari.

c. Non obstantibus præmissis, aliisque quibuslibet ordinationibus, constitutionibus, privilegiis, etiam speciali et individua mentione dignis, nec non consuetudinibus quibusvis, etiam immemorabilibus, ceterisque contrariis quibuscumque.

Nulli ergo omnino hominum liceat hanc paginam Nostræ Constitutionis, ordinationis, limitationis, suppressionis, derogationis, voluntatis infringere, vel ei ausu temerario contraire. Si quis autem hoc attentare præsumpserit, indignationem Omnipotentis Dei et Beatorum Petri et Pauli Apostolorum eius, se noverit incursurum.

Datum Romæ apud S. Petrum anno Incarnationis Dominicæ Millesimo Octingentesimo Sexagesimo Nono, Quarto Idus Octobris, Pontificatus Nostri anno vigesimo quarto.

M. Card Mattei Pro-Datarius.

N. Card. Paracciani Clarelli

Visa de Curia.

Dominicus Bruti

Loco ✠ Plumbi I. Cugnoni.

a. This constitution only affects the censures *latæ sententiæ* which belong to the common law of the Church; it does not touch those which concern the election of the Roman Pontiff, the internal government of Religious Orders, colleges, congregations, and religious bodies and places.

b. Before this constitution was issued, regulars had permanent faculties for granting absolution from ordinary papal cases. These are abrogated now, but temporary and very wide faculties are still granted them for the same purpose.

c. Custom can not be pleaded against this constitution unless it arises when the circumstances are altogether changed.

BOOK X

IRREGULARITIES

CHAPTER I

IRREGULARITY IN GENERAL

1. Some men are incapable of performing the duties attached to Orders, or, if not altogether incapable, they can not perform them with that decency and edification which their sacred character and the Church require. A blind man can not administer the sacraments, and one who has been guilty of great and notorious crimes is not a suitable person to exercise such holy offices, and guide others in the way of virtue. Certain defects, then, and crimes, partly from the nature of things, partly because the Church has so ordained, constitute a bar to the reception of Orders. These are called irregularities, and an irregularity is commonly defined to be a canonical impediment which primarily prevents the reception of Orders, and, secondarily, the lawful exercise of the duties and rights annexed to them. It is an impediment constituted by law, though it has its foundation in the nature of things, and so there can be no irregularity unless it is expressly sanctioned by law. It does not make the reception of Orders or their exercise invalid; it only makes these acts gravely sinful in one who is under irregularity, and forbids under pain of grave sin

the admission of such a one to the clerical state or the conferring of Orders on him. When Orders have been already received, an irregularity can only produce its secondary effect and hinder their lawful exercise. Even this effect has place only in respect of sacred Orders, for, according to present discipline, laymen may lawfully exercise the functions of the minor Orders, with the exception of those of the exorcist.

2. Irregularities are said to be *from defect* when they arise from an incapability of exercising the functions of Orders or from the indecency there would be in exercising them. They are said to be *from crime* when the Church has expressly laid down that the commission of such a crime shall entail irregularity in the delinquent.

Perpetual irregularity lasts for life unless it is removed by dispensation, and no dispensation can be granted for some irregularities arising from defect; temporary irregularity lasts only for a time and either ceases of itself, like that of age, or ceases by supplying the defect, as that arising from want of knowledge.

Irregularity which prevents the reception of Orders, and consequently the exercise of them, is said to be *total;* that which supervenes on the reception of Orders and only prevents their lawful exercise is *partial.*

3. As only males and those who are baptized can be validly ordained, the same two conditions are required in order to be subject to irregularity. There is nothing to prevent the same person from being subject to several different irregularities arising from different defects or crimes, nor from being subject to several irregularities of the same species arising from several crimes committed against different people, as from several homicides; but

otherwise only one irregularity is contracted from one and the same cause though several times repeated, and so a priest who while under suspension celebrates Mass several times, only incurs one irregularity.

Whenever there is a doubt either of law or of fact as to whether an irregularity has been incurred, almost all authorities agree that in practice it must be held not to have been incurred.

Irregularities from defect are incurred even by those who are ignorant of them, but, inasmuch as irregularities from crime suppose an external and grave sin to have been committed, ignorance of the law forbidding the act, and probably ignorance of the irregularity by which the crime is punished, will excuse from it, unless the ignorance be crass and supine. For although, primarily, irregularities are an impediment, they are also of the nature of a penalty, which the Church is not presumed to inflict on those who did not know of its existence. If, however, infamy follows on the commission of crime, irregularity is then certainly the consequence.

Want of age in those who have not yet reached puberty and grave fear also excuse from incurring irregularities arising from crimes.

CHAPTER II

IRREGULARITIES FROM DEFECT

THE irregularities arising from defect are commonly reckoned eight in number. They are: defect of birth, mind, body, age, sacrament, freedom, lenity, and reputation. Something must be said about each.

1. Defect of birth arises from illegitimacy, when the parents are either not married at all, or their marriage in the eyes of the Church is null and void on account of some diriment impediment known to both parties. If the impediment was unknown to at least one of the parents, the marriage is called putative, and the offspring is legitimate. When there is a doubt concerning legitimacy, as in the case of foundlings, legitimacy may be presumed until the contrary is proved.

This irregularity ceases by legitimation, dispensation, and solemn religious profession. If the parents at the time of conception or birth of the child could have been married, the child is by ecclesiastical law legitimized by subsequent marriage; otherwise it can only be legitimized by the rescript of the Pope. A dispensation from this irregularity may be granted by the Pope, and by delegated authority by bishops, regular prelates, and others. Solemn religious profession takes away the irregularity as far as it is a bar to the reception of Orders, but not so as to enable the party to accept prelacies in the Order without dispensation.

2. Defect of mind arises from want of reason, sufficient knowledge, or assured stability in the Faith.

All who are habitually without the use of reason are irregular, as well as epileptics. One afflicted with epilepsy before puberty, but who afterward is free from attacks, so that he may be judged to have recovered, may be promoted to Orders. Similarly, if epilepsy comes on after ordination, the afflicted priest should not attempt to say Mass while he is subject to attacks, but he may be permitted to do so if in the judgment of superiors all danger has ceased.

Want of assured stability in the Faith causes irregularity in the case of neophytes who have been baptized in adult age. The period during which this irregularity lasts seems to be left to the judgment of the bishop.

3. Any bodily defect which makes it impossible to say Mass and fulfil the other functions of Orders, or prevents the person afflicted from exercising the sacred ministry with decency and edification, constitutes an irregularity. Thus the blind, deaf, mute, lame, crippled or maimed in limb or even necessary fingers, notably deformed, and those who can not drink wine, are irregular.

In case of doubt the bishop may decide as to whether a person is irregular, and in such a case he may dispense as far as is necessary. If the irregularity is certain, only the Pope or his delegate can dispense. A dispensation from this impediment is more easily granted after ordination than before, to enable a priest to exercise his functions.

Want of canonical age is a bar to ordination, as we saw when treating of the sacrament of Orders, but the irregularity ceases on the attainment of that age.

4. Marriage as a sacrament symbolizes the union of

Christ with His Church, but to represent that union perfectly it should be a marriage of one man with one woman. In a second marriage the representation is less perfect, and such a bigamous marriage gives rise to the irregularity from defect of the sacrament.

A man becomes irregular from true bigamy when he has had two wives in succession, and has consummated marriage with both.

Besides this true bigamy, there is also bigamy by legal fiction. Thus a man becomes guilty of interpretative bigamy who consummates an invalid marriage with a woman who is married but separated from her husband; or with a widow known by her former husband, or by another man out of wedlock; or who has carnal intercourse with his wife after she has been corrupted by another man.

A man becomes guilty of similitudinary bigamy who, after taking a solemn vow of chastity in religion, or by receiving sacred Orders, attempts and consummates marriage.

5. Defect of freedom arises from slavery, marriage, or the duties of an incompatible office, such as that of a judge or magistrate.

Slavery has ceased to be of practical importance, and a married man may be ordained provided that his wife freely consents, takes a vow of chastity, and, if young, so that there is danger of incontinence, enters into a Religious Order.

All who hold an office which renders them liable to be called upon to give in accounts are irregular until they are free from their obligations.

6. Defect of lenity may cause irregularity in three ways:

a. No one may be promoted to Orders, or, if he has them already, may exercise them, who freely, knowingly, efficaciously, and immediately, co-operates in inflicting death or mutilation on a criminal, justly condemned. On this account, judges, jurymen, witnesses, and accusers who freely offer themselves, and executioners, are irregular; but not those who make a law punishing criminals with capital punishment.

b. Soldiers who are laymen are irregular if in a just offensive war they kill with their own hand except in self-defense, when they enlisted voluntarily. Clerics who fight of their own accord are irregular if they kill with their own hand except in self-defense in a just war, offensive or defensive.

c. Clerics in sacred Orders and regulars are irregular, who exercise the medical or surgical art with cutting or burning so that they cause death, even inculpably. Doctors and surgeons who are laymen do not incur irregularity unless they are the cause of death by their grave fault.

7. Loss of reputation, or infamy, is a cause of irregularity. Those who are guilty of certain grave crimes are declared by canon law to be *ipso facto* infamous, sometimes together with their children and grandchildren. Such are those who fight a duel, and their seconds, abductors of women, those who strike cardinals of the Holy Roman Church, those who are guilty of real simony, heretics, and their accomplices.

Any one who, on account of a grave crime, as a matter of fact, loses his reputation is infamous and irregular. If, however, afterward by his good conduct he recovers his reputation in the judgment of the bishop, he ceases

to be irregular; but those who labor under infamy inflicted by law or by judicial sentence require a dispensation which is reserved to the Pope. Superiors of regular Orders by privilege can dispense their subjects from irregularity arising from any infamy.

CHAPTER III

IRREGULARITIES ARISING FROM CRIME

1. The iteration of Baptism is forbidden by divine and ecclesiastical law, and irregularity is incurred by an adult who is knowingly rebaptized, by him who rebaptizes, and by any cleric who officially assists at rebaptism. The irregularity, however, is not incurred unless the rebaptism is public and unconditional.

An adult who receives Baptism from a declared heretic, except in case of necessity, is also irregular.

2. A cleric who knowingly and with solemnity exercises the functions of one of the sacred Orders which he has not received, thereby becomes irregular. So that a subdeacon who administers holy communion or Baptism without necessity contracts irregularity. One, however, who preaches without leave, or grants a dispensation without the requisite faculty, does not incur irregularity.

3. A cleric who solemnly and rashly exercises the functions of one of the sacred Orders while he is under any sort of censure incurs irregularity. Ignorance, provided that it be not crass or supine, and whatever excuses from grave fault, also excuses from the irregularity.

4. All heretics and apostates from the Faith, who belong to any heretical sect, are irregular even after repentance and conversion. Catholics who fall into secret heresy are probably not irregular unless they are proclaimed as heretics.

Descendants to the second degree on the father's side, and to the first on the mother's, of heretics who belong to any heretical sect or who die in heresy, are irregular. This irregularity seems to arise from the infamy which is attached to heresy, and it ceases on the conversion of the parents.

Fautors, defenders, and receivers of heretics incur irregularity after they have been declared guilty by judicial sentence.

5. Whoever, by any unjust and gravely culpable action, directly or indirectly, physically or morally, are guilty of homicide, thereby contract irregularity. Even casual homicide produces irregularity if it is the effect of grave negligence. If any one is killed in an unjust war, all who fought on the other side contract irregularity, unless they were compelled to fight, or abstained from any action which could be the cause of death.

Whoever, by an unjust and gravely culpable action mutilates another by cutting off some principal member, contracts irregularity.

One who causes abortion, or co-operates therein, after the fetus is for certain animated, also incurs irregularity.

A cleric who is not a priest is made incapable of ascending to higher Orders if he violate the prescriptions of the decree S.C.C., May 11, 1904, concerning manual stipends for Mass.

CHAPTER IV

REMOVAL OF IRREGULARITIES

SEVERAL irregularities, especially of those which arise from defect, cease by the removal of the cause on which they rest. This is true of the irregularities arising from defect of age, knowledge, and assured faith in the case of neophytes.

The other irregularities, except those which the natural law demands, may be removed by dispensation of the competent authority. The Pope can dispense in all such irregularities, and he ordinarily does so through the various Roman congregations.

Bishops by their ordinary power can dispense their subjects from irregularities arising from secret crime except voluntary homicide, from doubtful irregularities, and from the irregularity arising from defect of birth to enable one who is illegitimate to receive minor Orders. By special indult they receive still more ample faculties from the Holy See. Regular confessors by a special privilege can dispense from those irregularities in which bishops can grant dispensations to their subjects, and besides, they receive special faculties for other cases.

All confessors who have ordinary faculties in missionary countries usually have delegated authority to grant dispensations in irregularities arising from secret crime, except voluntary homicide.

NOTE. — Very ample faculties for dispensing in irregularities are usually given to priests in the United States. Thus, in the archdiocese of St. Louis and in many other dioceses of this country, the *pagella* contains the following words: "*Dispensandi a quibuscunque irregularitatibus, exceptis illis quæ proveniunt ex bigamia vera, homicidio voluntario, vel ab exercitio ordinis aut jurisdictionis, dum quis ex sententia a Nobis prolata ab illo suspenditur.*" Accordingly, whether the irregularity arises "*ex delicto*" or "*ex defectu,*" whether it is occult or public, priests having the ordinary faculties of the diocese have power to dispense in it. There are only three exceptions. One occurs when there is true bigamy, *i.e.*, when a person has been twice married, each marriage being consummated, he incurs an irregularity from which he can not be dispensed under this faculty; and this, whether the bigamy was public or not. Secondly, when the homicide is voluntary, whether public or occult, this faculty does not empower a priest to dispense in the irregularity arising therefrom. A third exception occurs when the irregularity arises from the exercise of order or jurisdiction, after the cleric has been suspended from such exercise by the sentence of the ordinary of the diocese. It may be observed that the word, "*jurisdictionis,*" in the foregoing faculty does not mean mere jurisdiction, since an irregularity is not incurred by the exercise of jurisdiction alone, for example, by absolving from censures or dispensing in vows, but by an exercise of Orders. Hence when the term, "*jurisdictionis,*" is here employed in connection with irregularity, it means the exercise of an Order for whose exercise jurisdiction is required, *e.g.*, forgiveness of sins in the sacrament of Penance. Hence the meaning of this whole clause is that whether a

cleric exercises Orders alone, as in saying Mass, or Orders along with jurisdiction, as in hearing confessions, after being suspended by the ordinary from either one or the other, he can not be dispensed from the irregularity thus contracted by the authority communicated in this faculty. It is also deserving of notice that while this faculty is very extensive, having no exceptions but those three indicated above, yet there are some irregularities which impinge upon the divine law, and in which this faculty does not empower one to dispense. (See Putzer, Apost. Fac., n. 103; Gasparri, De Ordinatione, n. 233.) — END OF NOTE.

BOOK XI

INDULGENCES

CHAPTER I

THE NATURE OF AN INDULGENCE

1. In every sin the teaching of the Catholic Church distinguishes two elements: the *guilt* and the *penalty* which it incurs. The guilt is the injury committed against God by the sinner and the displeasure with which God views the sinful act. If the sin is mortal, it deprives the soul of sanctifying grace and of God's friendship, so that a state of enmity exists between God and the sinner. A venial sin is an injury against God; it is the object of His displeasure, and is a stain on the soul, but it does not rob the soul of sanctifying grace or deprive it of the friendship of God. Besides this guilt a sin deserves and ordinarily receives punishment at the hands of God. It is a law of God's justice that wrong-doing entails suffering either in this world or in the world to come. It is the sanction which in the nature of things is annexed to the great moral law. The penalty for mortal sin, as befits the unrepenting and obstinate enemies of God, is eternal separation from Him and punishment in the fires of hell; the penalty for venial sin is temporary punishment in this world or in purgatory. These two elements in sin are not

only distinct from each other in thought; they may be, and frequently are, separated in reality. When God pardons mortal sin, the eternal penalty which it deserves in hell is also remitted, but we know from revelation that He frequently exacts from the sinner some temporary punishment for the serious offense which has been committed against Him and right order. The guilt of David's adultery was forgiven on his repentance, but he had to endure the loss of the child and other punishments. This is only in keeping with what we might expect at the hands of a wise Providence and with what observation of the order of nature teaches us. A man may truly repent of his sin and he may have the fullest confidence that God has pardoned it, but he knows that he will have to bear the sad effects of it till his dying day.

This distinction between the guilt of sin and the penalty due to it is necessary for the understanding of what is meant by an indulgence. An indulgence is not the forgiveness of the guilt of sin; much less is it a permission to commit sin. It is the remission of the temporal punishment which often remains due to sin after its guilt has been forgiven. An indulgence, then, can not be gained for unrepented sin, nor for sin of which the guilt still stains the soul. If, however, the guilt has been forgiven, any temporal punishment which remains to be suffered in consequence of it may be remitted by indulgences and by other means.

2. As the Catholic Church claims that her divine Founder empowered her ministers to forgive sin, provided that the sinner has the requisite dispositions, so she also lays claim to the power of remitting the temporal punishment due to sin both by the ministration of the sacraments and by

granting indulgences. From the first centuries of the Christian era her bishops have used the power to condone temporal punishment due to sin outside sacramental confession, and they have understood that this power was contained in the general power to bind and loose granted to the apostles and their successors by Our Lord. As the Pope has jurisdiction over the whole world, he can grant indulgences to all the faithful; a bishop can only grant indulgences to those who are within his diocese, and up to the limits imposed on him by the supreme authority of the Roman Pontiff.

The doctrine of indulgences is intimately connected with other dogmas of the Catholic faith. When the Church remits temporal punishment due to sin, she does not simply condone it outright in the name of God, but she pays the debt due to sin out of the treasure of the Church. This treasure of the Church is made up of the satisfactions of Our Lord and of His saints. Christ and all the members of His Church form one mystical body: "For as in one body we have many members but all the members have not the same office: so we being many, are one body in Christ, and every one members one of another." [1] "One body and one Spirit: as you are called in one hope of your calling. One Lord, one Faith, one Baptism. One God and Father of all, who is above all, and through all, and in us all." [2] By virtue of this oneness in Christ, there is among the faithful what is called the communion of saints. Not only do all get the benefit of the same sacrifice and sacraments, but the good works of each benefit to some extent all the rest. The merit, indeed, which every good action possesses with God, with a view to an eternal

[1] Rom. xii. 4. [2] Eph. iv. 4–6.

reward, is personal and belongs exclusively to the doer of it; but besides meriting, every good action has also a power of placating God and satisfying for sin, as well as a power of impetrating His graces and blessings. The satisfactory part of the good actions of Christ and His saints was not required to satisfy for their own offenses, and it is available to satisfy for the sins of those who form with them one mystical body. It needs, however, application to the individual soul, and one of the ways in which this is done is through indulgences. The dispensing of the mysteries of God belongs to the prelates of His Church, and inasmuch as they have jurisdiction over the faithful in this life, indulgences are applied to them directly by the power of the keys.

Over the faithful departed who are suffering for their sins in purgatory the Church has no jurisdiction, but as we can pray for them, and they are helped thereby, so if the Church permits it we can gain indulgences and apply them to the souls of the faithful departed by way of suffrage, asking God to accept the satisfaction offered for the holy souls.

3. A plenary indulgence is one by which all the debt of temporal punishment due to a person for his sins is remitted, while a partial indulgence, of say forty days, remits the same amount of temporal punishment which would have been remitted by undergoing canonical penance for forty days according to the ancient discipline of the Church.

Indulgences are local, if they can only be gained in a particular place, as by visiting some particular church; they are personal, if they are attached to certain persons who fulfil certain conditions; they are real, if they are

attached to a particular object, as to a crucifix or a rosary.

Again they are temporary, if they can only be gained within a specified time; if granted without any time limit, they are perpetual.

CHAPTER II

CONDITIONS REQUIRED FOR GAINING INDULGENCES

1. THERE must always be a just cause for granting an indulgence, otherwise the grantor would not be a faithful dispenser of the mysteries of God, and he would fail in the trust committed to him by God. In practice, however, this does not concern the faithful to whom indulgences are granted; they may rest assured that there is always a just cause for the indulgences which the Church offers for their acceptance.

2. No one can gain an indulgence unless he is a member of the Catholic Church, and, moreover, he must have the requisite intention, he must be in the state of grace, and he must fulfil all the conditions prescribed for gaining the indulgence.

It is not necessary that the intention be actual; it is sufficient if it be virtual, so that there was the wish to gain the indulgence, and it continues to influence the actions whose performance is required for the purpose of gaining the indulgence. It will be sufficient to form an intention in the morning of gaining all the indulgences which may be annexed to any of the good works done during the following day. Some authorities hold that such a virtual intention is not necessary, but that an habitual, or even an interpretative intention, will suffice. An habitual intention is one which was formed and which

has not been retracted, but which does not influence the performance of one's actions any longer. An interpretative intention does not exist in reality, but it would be elicited if the agent thought of the matter. Inasmuch as an indulgence is a grant made by the Church to all who fulfil certain conditions, these authors maintain that all pious Catholics who value indulgences gain such as are annexed to their prayers and other good deeds without any special intention. This opinion, however, though probable, is not certain, and so it is safer in practice to follow the other, which requires at least a virtual intention, especially as it is doubtful whether probabilism can be used in this matter.

3. The person who gains an indulgence must also be in the state of grace, for one who is in mortal sin, at enmity with God, and liable to eternal punishment, is not a fit subject for the remission of temporal punishment due to his sins. The Church, too, requires that those who wish to gain the indulgences which she offers to her children should be contrite in heart, or, in other words, in the state of grace, recovered, if they had fallen, by means of sacramental confession, or at least by an act of perfect contrition. When several actions, such as visiting a church, prayer for the Pope, confession, etc., are prescribed for gaining an indulgence, it is not absolutely necessary that all such actions be performed while the agent is in the state of grace; it will be sufficient if the soul be in the state of grace when the last condition is fulfilled, and when the indulgence is applied.

4. Finally, all the conditions laid down by him who granted the indulgence must be faithfully fulfilled by any one who wishes to gain it. If the indulgence be annexed

to the saying of a prayer, the prayer must be said with the lips; it is not sufficient to repeat it mentally. Deaf-mutes may obtain from their confessors a commutation of vocal prayers into other good works, and if one of the conditions for gaining an indulgence is visiting a church and praying therein for the intentions of the Holy Father, they may fulfil this condition by visiting the church and praying mentally.

The ordinary conditions prescribed for gaining a plenary indulgence are: prayer for the intentions of the Sovereign Pontiff, visit to a church, and confession and holy communion.

To satisfy the condition of prayer for the intentions of the Pope, any form of prayer which is not already of obligation will suffice. A priest, therefore, could not satisfy this condition by saying his breviary to which he is already bound by the law of the Church, but it has been decided that when indulgenced prayers are prescribed by a confessor for sacramental penance, the penitent may say his penance and gain the indulgence at the same time. The length of prayer for the Pope's intention is not ordinarily defined, but authors are agreed that five Our Fathers and five Hail Marys will suffice. The Pope's intentions are: the common good of the Church, the propagation of the Faith, the conversion of sinners, heretics, and schismatics, and peace and concord among Christian peoples. To gain the indulgence it is not necessary to have these intentions distinctly in mind; it will be sufficient to pray for the Pope's intentions in general.

The prayers may be said alone or with others alternately, and they may be said anywhere, unless it is specially prescribed that they are to be said while visiting the church.

Unless some special church is mentioned for the visit, any Church or public oratory to which the public have free access may be selected. Semipublic oratories of religious communities and private chapels will not suffice, unless by special indult.

5. When confession is prescribed, it must be made even if the penitent has only venial sins to confess, though absolution is not necessary. Those who are in the habit of confessing once a week may gain thereby all the indulgences occurring during the week for which confession is a condition, and some bishops have an indult by which they can extend this privilege to those of their subjects who confess every fortnight. Daily communicants may gain indulgences, even though on some days they omit holy communion, without fulfilling the condition of weekly confession.[1]

It has been specially provided that the Easter communion, though of obligation, suffices for gaining indulgences of which communion is a condition, except the Jubilee.

When a particular day is designated as that on which an indulgence may be gained, the natural day from midnight to midnight is understood, and *per se* the conditions must be fulfilled within that time. However, when an indulgence is granted for a particular feast, as a rule the conditions may be fulfilled after the hour of first Vespers, or midway between midday and sunset of the eve of the feast. Confession and communion on the eve suffice for gaining an indulgence on the following day, and by special indult confession for gaining the Portiuncula indulgence may be made on or after July 30, and that for the indul-

[1] Sacred Congregation of Indulgences, February 14, 1906.

gence granted on the feast of the rosary on or after the preceding Friday.

The conditions enjoined may be fulfilled in any order.

6. According to the general rule, an indulgence can only be gained once on the day designated, but not infrequently an indulgence is granted *toties quoties*, and then it may be gained as often as the conditions are fulfilled. In this case if confession and communion, or in general any good work which is not capable of being repeated on the same day, be among the conditions prescribed, such conditions are only fulfilled once, and the others are repeated as often as it is desired to gain the indulgence. When several indulgences are attached to the same action, and this can not be repeated, as is the case with holy communion, all the indulgences may be gained by the one action. If, however, the action enriched by several sets of indulgences be capable of being repeated on the same day, such as saying the rosary, as a general rule only one set of indulgences determined by him who wishes to gain them can be gained by performing the action once. Pius X, however, by a decree dated June 12, 1907, made an exception to this rule in favor of rosaries enriched with the Croisiers' indulgences, which may now be gained in reciting the rosary cumulatively, together with other indulgences already granted to the same rosaries.

It must frequently happen that plenary indulgences can not be gained in full on account of some obstacle in the way, such as unforgiven venial sin. In such a case it is commonly held that according to the intention of the Church the indulgence takes its effect as far as possible, and becomes in fact a partial indulgence.

7. Almost all indulgences are now applicable to the souls in purgatory. In order that they may be applied to them in fact, the person who fulfils the conditions should form his intention of offering them to God for the benefit of certain souls, or for the benefit of the souls in purgatory in general. It is a controverted point among the theologians whether such application is infallible in its effect or not. The difficulty is about the divine promise to accept such offerings, some theologians holding that such a promise is implicitly contained in the words of Our Lord: "Whatsoever you shall loose on earth shall be loosed also in heaven"; others denying this. The negative opinion seems to be more in accordance with the mind and practice of the Church.

Similarly, it is a disputed question among theologians whether one who gains an indulgence for the souls in purgatory must himself be in the state of grace. Many hold that he must be, as he must gain the indulgence himself before he can apply it to the holy souls. Others do not see the necessity of this, for such a one only fulfils the conditions, and on the fulfilment of these the Church offers to God the corresponding satisfactions. Both opinions are probable, but the former is safer in practice.

8. Objects to be indulgenced should be solid and not easily breakable. Hence pictures on paper, and hollow glass beads, may not be indulgenced; but beads made of solid glass, or of iron, or wood, may be.

Objects do not lose their indulgences as long as they remain morally the same. In a rosary the indulgences are attached to the beads, not to the string, so that even though the string be changed, or a few beads be lost and others substituted for them, the indulgences are not lost.

When a crucifix is indulgenced, the indulgence is attached to the image, not to the cross.

To prevent the danger of simony, indulgences attached to a movable object are lost if its ownership is transferred to a person different from the one for whom it was indulgenced. This, however, does not hinder the lending of a rosary to another so that he may use it to say his beads, for there is in such an act no intention of transferring the indulgence.

CHAPTER III

THE JUBILEE

1. A JUBILEE is a plenary indulgence granted by the Pope with greater solemnity than usual for a definite time, together with special faculties for confessors. The first jubilee was granted by Boniface VIII in the year 1300 with the intention that it should be held thereafter every hundred years, but subsequent Popes changed the period into fifty, thirty-three, and finally into twenty-five years. This is called a greater or ordinary jubilee, to distinguish it from the less or extraordinary jubilee, which the Pope grants on some special occasion, as, to celebrate his election to the papacy. A general jubilee is granted to all the faithful, usually in the first place at Rome, and afterward it is extended to the rest of the world; a particular jubilee is granted to a particular province or Religious Order.

2. The conditions prescribed for gaining an ordinary jubilee are: confession, communion, and prayer for the Pope's intentions in churches to be visited for the purpose a certain number of times.

Confession is necessary for those who wish to gain the jubilee even if they are not conscious of mortal sin, and the annual confession which is prescribed by ecclesiastical law will not suffice. If a grievous sin is inadvertently omitted from the jubilee confession, this is nevertheless

sufficient for gaining the indulgence, but of course the sin which was forgotten must be mentioned in the next confession. If, after going to confession and before fulfilling the other conditions for gaining the jubilee, mortal sin is committed, the person should go again to confession to gain the indulgence.

A good communion distinct from the ordinary Easter communion is another of the conditions to be fulfilled.

At Rome the four basilicas, St. Peter's, St. Paul's outside the Walls, St. John Lateran, and St. Mary Major, are usually designated to be visited a certain number of times, and during the visits prayer is to be offered up for the Pope's intention. Outside Rome the churches to be visited are usually left to be determined by the bishop. The visits must be made in one day according either to the civil or the ecclesiastical method of reckoning, or, in other words, reckoning either from midnight to midnight, or from the hour of vespers.

For an extraordinary jubilee, besides the above conditions, fasting and almsgiving are also prescribed.

The fast is a strict one, comprising not only abstinence from flesh meat, but also from eggs and *lacticinia*. A day which is not a fasting day by ecclesiastical law must be chosen, unless the contrary is specially conceded in the bull of indiction of the jubilee, and then the strict fast must be observed, nor can advantage be taken of any indult. Even those who are not bound by the ecclesiastical law of fasting must fulfil this condition if they wish to gain the jubilee.

The amount to be given in alms is not generally specified, and any amount will suffice provided that it is not so small as not to deserve the name. Religious, wives, children,

and servants, may have their obligation fulfilled for them by superiors, husbands, parents, and masters.

Bishops and confessors receive faculties to commute all the above conditions for ordinary and extraordinary jubilees except prayer, confession, and sometimes holy communion. For the lawful and valid use of this faculty there should always be a just cause, and some good work of more or less equal merit should be enjoined in place of that commuted.

3. Regulars who desire to gain the jubilee may choose a confessor from among those, whether secular or regular, who are approved by the bishop, or they may confess to one approved by their superiors. Nuns are sometimes empowered to choose a confessor for the purpose of gaining the jubilee from any priests approved by the bishop; sometimes it is prescribed that the confessor chosen must be one of those who are approved for the confessions of nuns. Confession may be made to the priest thus chosen as often as the penitent desires before the fulfilment of the last condition for gaining the jubilee, but not afterward.

The confessor chosen for the jubilee confession has special faculties given to him by the bull of indiction. This should always be carefully studied in order that the confessor may know the extent of his powers. Ordinarily, he is empowered to absolve penitents from all censures and sins, even those that are reserved. The cases of attempted absolution of an accomplice and a false charge of solicitation are generally excepted, or power to absolve them is only granted under restriction. The absolution would be valid if the penitent who came to confession with the intention of gaining the jubilee afterward changed his mind and gave up the attempt; and probably the reservation would be removed if a reserved sin were confessed by such

a penitent, though the confession were sacrilegious, or inculpably null and void.

Jubilee confessors have also ample faculties granted them for dispensing from vows or commuting them, though vows of perpetual chastity, of entering a Religious Order with solemn vows, and those which have been accepted by third parties, are usually excepted.

While the greater jubilee is being celebrated at Rome, the special faculties granted to bishops and priests for the internal forum are ordinarily suspended, at least with respect to penitents who can make the journey to Rome.

In the same way during this time other indulgences granted by the Pope in favor of the faithful who are living are suspended, though they may all be gained for the faithful departed. Certain special indulgences, as those for the saying of the Angelus, those granted to the dying, and for the solemn exposition of the Blessed Sacrament, are excepted.

APPENDIX A

PROHIBITED BOOKS

THE modern law of the Church concerning forbidden books is contained in the Index published by order of Leo XIII in the year 1900. It is divided into two parts, the first of which contains the general constitution of Leo XIII on forbidden books, first issued in 1897, together with the constitution of Benedict XIV on the censorship of books; the second part consists of an alphabetical list of books which have been specially condemned. It will be sufficient for our purpose to say a word on the binding force of this new Index in English-speaking countries, and then print the authorized translation of the constitution of Leo XIII which contains the general laws now in force on the subject of forbidden books.

All Catholics must admit that if the Roman Pontiff, while promulgating a new law at Rome, makes known his will to bind thereby all the faithful throughout the world, there can be no question but that all are in fact bound by the new law. The constitution *Apostolicæ Sedis* of Pius IX was promulgated in this way at Rome for the whole world, and now without doubt binds all Catholics. In the same way the constitution of Leo XIII was promulgated in Rome and the Pope clearly made known his intention to bind all Catholics throughout the world by its provisions. Thus in the preamble of this constitution the Pope says:

"We have decided to issue the following general decrees appended to this constitution, . . . and all Catholics throughout the world shall strictly obey them." Among these general decrees, No. 45 is couched in these words: "Books condemned by the Apostolic See are to be considered as prohibited all over the world, and into whatever language they may be translated." In the constitution *Romani Pontifices*, September 17, 1900, by which Leo XIII prefaced his new Index, the Pope says: "*Hujusmodi igitur librorum prohibitorum generalem Indicem, jussu Nostro recognitum et emendatum, ac typis vaticanis impressum, quem tamquam litteris hisce expresse insertum haberi volumus, auctoritate apostolica, tenore præsentium, approbamus et confirmamus, atque ab omnibus ubique locorum integre et inviolabiliter observari præcipimus, sub pœnis in Constitutione Nostra* Officiorum ac munerum *sancitis.*" Furthermore, the Sacred Congregation of the Index, May 19, 1898, answered *Affirmative* to this question proposed to it: Whether the said constitution is of binding force even in English-speaking countries which some think enjoy a tacit dispensation. From the point of view of canon law and theology, there can be no question about the matter; the new Index is certainly of binding force throughout the world, and therefore also in English-speaking countries. This was immediately recognized by the bishops of the province of Westminster, and they at once explained to the Holy See the great difficulties which beset the observance of the law in England. To meet these difficulties, by a rescript of Propaganda, May 31, 1897, the English bishops were empowered to grant dispensations to those of their subjects who should ask for it to read forbidden books. In some of the dioceses the bishops delegate this power of

dispensing to all their priests who have diocesan faculties. It should, of course, be used with prudence and discretion, and it does not extend to the natural law which forbids any one to expose himself to the danger of sin without just cause.

APOSTOLIC CONSTITUTION OF

OUR HOLY FATHER POPE LEO XIII

CONCERNING THE PROHIBITION AND CENSORSHIP OF BOOKS [1]

LEO, BISHOP

SERVANT OF THE SERVANTS OF GOD

For a Perpetual Memorial

Of all the official duties which We are bound most carefully and most diligently to fulfil in this supreme position of the Apostolate, the chief and principal duty is to watch assiduously and earnestly to strive that the integrity of Christian faith and morals may suffer no diminution. And this, more than at any other time, is especially necessary in these days, when men's minds and characters are so unrestrained that almost every doctrine which Jesus Christ, the Saviour of mankind, has committed to the custody of His Church, for the welfare of the human race, is daily called into question and doubt. In this warfare, many and varied are the stratagems and hurtful devices of the enemy; but most perilous of all is the uncurbed freedom of writing and publishing noxious literature. Nothing can be conceived more pernicious, more apt to defile souls, through its contempt of religion and its manifold allure-

[1] Authorized translation.

ments to sin. Wherefore the Church, who is the custodian and vindicator of the integrity of faith and morals, fearful of so great an evil, has from an early date realized that remedies must be applied against this plague; and for this reason she has ever striven, as far as lay in her power, to restrain men from the reading of bad books, as from a deadly poison. The early days of the Church were witnesses to the earnest zeal of St. Paul in this respect; and every subsequent age has witnessed the vigilance of the Fathers, the commands of the bishops, and the decrees of councils in a similar direction.

Historical documents bear special witness to the care and diligence with which the Roman pontiffs have watchfully endeavored to prevent the spread of heretical writings detrimental to the public. History is full of examples. Anastasius I solemnly condemned the more dangerous writings of Origen, Innocent I those of Pelagius, Leo the Great all the works of the Manicheans. The *decretal* letters opportunely issued by Gelasius, concerning books to be received and rejected, are well known. And so, in the course of centuries, the Holy See condemned the pestilent writings of the Monothelites, of Abelard, Marsilius Patavinus, Wyclif, and Huss.

In the fifteenth century, after the invention of the art of printing, not only were bad publications which had already appeared condemned, but precautions began to be taken against the publication of similar works in the future. These prudent measures were called for by no slight cause, but rather by the need of protecting the public morals and welfare at the time; for too many had rapidly perverted into a mighty engine of destruction an art which was excellent in itself, productive of immense advantages, and

naturally destined for the advancement of Christian culture. Owing to the rapid process of publication, the great evil of bad books had been multiplied and accelerated. Wherefore Our predecessors Alexander VI and Leo X most wisely promulgated certain definite laws, well suited to the character of the times, in order to restrain printers and publishers within the limits of their duty.

The tempest soon became more violent, and it was necessary to check the contagion of heresy with still more vigilance and severity. Hence Leo X and afterward Clement VII severely prohibited the reading or retaining of the books of Luther. But as, owing to the unhappy circumstances of that epoch, the foul flood of pernicious books had increased beyond measure and spread in all directions, there appeared to be need of a more complete and efficacious remedy. This remedy Our predecessor Paul IV was the first to employ, by opportunely publishing a list of books and other writings, against which the faithful should be warned. A little later the Council of Trent took steps to restrain the ever-growing license of writing and reading by a new measure. At its command and desire, certain chosen prelates and theologians not only applied themselves to increasing and perfecting the Index which Paul IV had published, but also drew up certain rules to be observed in the publishing, reading, and use of books; and to these rules Pius IV added the sanction of his apostolic authority.

The interests of the public welfare, which had given rise to the Tridentine Rules, necessitated in the course of time certain alterations. For which reason the Roman Pontiffs, especially Clement VIII, Alexander VII, and Benedict XIV, mindful of the circumstances of the period and the dictates

of prudence, issued several decrees calculated to elucidate these rules and to accommodate them to the times.

The above facts clearly prove that the chief care of the Roman Pontiffs has always been to protect civil society from erroneous beliefs and corrupt morals, the twin causes of the decline and ruin of states, which commonly owes its origin and its progress to bad books. Their labors were not unfruitful, so long as the divine law regulated the commands and prohibitions of civil government, and the rulers of states acted in unison with the ecclesiastical authority.

Every one is aware of the subsequent course of events. As circumstances and men's minds gradually altered, the Church, with her wonted prudence, observing the character of the period, took those steps which appeared most expedient and best calculated to promote the salvation of men. Several prescriptions of the rules of the Index, which appeared to have lost their original opportuneness, she either abolished by decree, or, with equal gentleness and wisdom, permitted them to grow obsolete. In recent times, Pius IX, in a letter to the archbishops and bishops of the States of the Church, considerably mitigated Rule X. Moreover, on the eve of the Vatican Council, he instructed the learned men of the preparatory commission to examine and revise all the rules of the Index, and to advise how they should be dealt with. They unanimously decided that the rules required alteration; and several of the Fathers of the council openly professed their agreement with this opinion and desire. A letter of the French bishops exists urging the necessity of immediate action in "republishing the rules and the whole scheme of the Index in an entirely new form, better suited to our times and easier to observe." A similar opinion was expressed at the same time by the bishops of

Germany, who definitely petitioned that "the rules of the Index might be submitted to a fresh revision and arrangement." With these bishops many bishops of Italy and other countries have agreed.

Taking into account the circumstances of our times, the conditions of society, and popular customs, all these requests are certainly justified and in accordance with the maternal affection of Holy Church. In the rapid race of intellect, there is no field of knowledge in which literature has not run riot; hence, the daily inundation of most pernicious books. Worst of all, the civil laws not only connive at this serious evil, but allow it the widest license. Thus, on the one hand, many minds are in a state of anxiety; whilst, on the other, there is unlimited opportunity for every kind of reading.

Believing that some remedy ought to be applied to these evils, We have thought well to take two steps which will supply a certain and clear rule of action in this matter. Firstly, to diligently revise the Index of books forbidden to be read; and We have ordered this revised edition to be published when complete. Secondly, We have turned our attention to the rules themselves, and have determined, without altering their nature, to make them somewhat milder, so that it can not be difficult or irksome for any person of good will to obey them. In this We have not only followed the example of Our predecessors, but imitated the maternal affection of the Church, who desires nothing more earnestly than to show herself indulgent, and, in the present as in the past, ever cares for her children in such a manner as gently and lovingly to have regard to their weakness.

Wherefore, after mature deliberation, and having con-

sulted the cardinals of the Sacred Congregation of the Index, We have decided to issue the following general decrees appended to this constitution; and the aforesaid Sacred Congregation shall, in the future, follow these exclusively, and all Catholics throughout the world shall strictly obey them. We will that they alone shall have the force of law, abrogating the rules published by order of the sacred Council of Trent, and the observations, instruction, decrees, monita, and all other statutes and commands whatsoever of Our Predecessors, with the sole exception of the constitution *Sollicita et provida* of Benedict XIV, which We will to retain in the future the full force which it has hitherto had.

General Decrees Concerning the Prohibition and Censorship of Books

Article I

OF THE PROHIBITION OF BOOKS

The Prohibited Books of Apostates, Heretics, Schismatics, and other Writers

1. All books condemned before the year 1600 by the Sovereign Pontiffs, or by œcumenical councils, and which are not recorded in the new Index, must be considered as condemned in the same manner as formerly: with the exception of such as are permitted by the present general decrees.

2. The books of apostates, heretics, schismatics, and all writers whatsoever, defending heresy or schism, or in any way attacking the foundations of religion, are altogether prohibited.

3. Moreover, the books of non-Catholics, *ex professo* treating of religion, are prohibited, unless they clearly contain nothing contrary to Catholic faith.

4. The books of the above-mentioned writers, not treating *ex professo* of religion, but only touching incidentally upon the truths of Faith, are not to be considered as prohibited by ecclesiastical law, unless proscribed by special decree.

Editions of the Original Text of Holy Scripture and of Versions not in the Vernacular

5. Editions of the original text and of the ancient Catholic versions of Holy Scripture, as well as those of the Eastern Church, if published by non-Catholics, even though apparently edited in a faithful and complete manner, are allowed only to those engaged in theological and biblical studies, provided also that the dogmas of Catholic faith are not impugned in the prolegomena or annotations.

6. In the same manner, and under the same conditions, other versions of the Holy Bible, whether in Latin, or in any other dead language, published by non-Catholics, are permitted.

Vernacular Versions of Holy Scripture

7. As it has been clearly shown by experience that, if the Holy Bible in the vernacular is generally permitted without any distinction, more harm than utility is thereby caused; owing to human temerity: all versions in the vernacular, even by Catholics, are altogether prohibited, unless approved by the Holy See, or published, under the vigilant care of the bishops, with annotations taken from the Fathers of the Church and learned Catholic writers.

8. All versions of the Holy Bible, in any vernacular language, made by non-Catholics, are prohibited; and especially those published by the Bible societies,which have been more than once condemned by the Roman Pontiffs, because in them the wise laws of the Church concerning the publication of the sacred books are entirely disregarded.

Nevertheless, these versions are permitted to students of theological or biblical science, under the conditions laid down above (No. 5).

Obscene Books

9. Books which professedly treat of, narrate, or teach lewd or obscene subjects, are entirely prohibited, since care must be taken, not only of faith, but also of morals, which are easily corrupted by the reading of such books.

10. The books of classical authors, whether ancient or modern, if disfigured with the same stain of indecency, are, on account of the elegance and beauty of their diction, permitted only to those who are justified on account of their duty or the function of teaching; but on no account may they be placed in the hands of, or taught to, boys or youths, unless carefully expurgated.

Certain Special Kinds of Books

11. Those books are condemned which are derogatory to Almighty God, or, to the Blessed Virgin Mary or the saints, or to the Catholic Church and her worship, or to the sacraments, or to the Holy See. To the same condemnation are subject those works in which the idea of the inspiration of Holy Scripture is perverted, or its extension too narrowly limited. Those books, moreover, are prohibited which

professedly revile the ecclesiastical hierarchy, or the clerical or religious state.

12. It is forbidden to publish, read, or keep books in which sorcery, divination, magic, the evocation of spirits, and other superstitions of this kind are taught or commended.

13. Books or other writings which narrate new apparitions, revelations, visions, prophecies, miracles, or which introduce new devotions, even under the pretext of being private ones, if published without the legitimate permission of ecclesiastical superiors, are prohibited.

14. Those books, moreover, are prohibited which defend as lawful, duelling, suicide, or divorce; which treat of Freemasonry, or other societies of the kind, teaching them to be useful and not injurious to the Church and to society; and those which defend errors proscribed by the Apostolic See.

Sacred Pictures and Indulgences

15. Pictures, in any style of printing, of Our Lord Jesus Christ, the Blessed Virgin Mary, the angels and saints, or other servants of God, which are not conformable to the sense and decrees of the Church, are entirely forbidden. New pictures, whether produced with or without prayers annexed, may not be published without permission of ecclesiastical authority.

16. It is forbidden to all to give publicity in any way to apocryphal indulgences, and such as have been proscribed or revoked by the Apostolic See. Those which have already been published must be withdrawn from the hands of the faithful.

17. No books of indulgences, or compendiums, pam-

phlets, leaflets, etc., containing grants of indulgences, may be published without permission of competent authority.

Liturgical Books and Prayer-books

18. In authentic editions of the missal, breviary, ritual, ceremonial of bishops, Roman pontifical, and of other liturgical books approved by the Holy Apostolic See, no one shall presume to make any change whatsoever; otherwise such new editions are prohibited.

19. No Litanies — except the ancient and common litanies contained in the breviaries, missals, pontificals, and rituals, as well as the Litany of Loreto, and the Litany of the Holy Name of Jesus already approved by the Holy See — may be published without the examination and approbation of the ordinary.

20. No one, without license of legitimate authority, may publish books or pamphlets of prayers, devotions, or religious, moral, ascetic, or mystic doctrine and instruction, or others of like nature, even though apparently conducive to the fostering of piety among Christian people; otherwise they are to be considered as prohibited.

Newspapers and Periodicals

21. Newspapers and periodicals which designedly attack religion or morality are to be held as prohibited, not only by the natural, but also by the ecclesiastical law.

Ordinaries shall take care, whenever it be necessary, that the faithful be warned against the danger and injury of reading of this kind.

22. No Catholics, particularly ecclesiastics, shall pub-

lish anything in newspapers or periodicals of this character, unless for some just and reasonable cause.

Permission to Read and Keep Prohibited Books

23. Those only shall be allowed to read and keep books prohibited, either by special decrees, or by these general decrees, who shall have obtained the necessary permission, either from the Apostolic See or from its delegates.

24. The Roman Pontiffs have placed the power of granting licenses for the reading and keeping of prohibited books in the hands of the Sacred Congregation of the Index. Nevertheless the same power is enjoyed both by the Supreme Congregation of the Holy Office, and by the Sacred Congregation of Propaganda for regions subject to its administration. For the city of Rome this power belongs also to the master of the sacred apostolic palace.

25. Bishops and other prelates with quasi-episcopal jurisdiction may grant such license for individual books, and in urgent cases only. But if they have obtained from the Apostolic See a general faculty to grant permission to the faithful to read and keep prohibited books, they must grant this only with discretion and for a just and reasonable cause.

26. Those who have obtained apostolic faculties to read and keep prohibited books may not on this account read and keep any books whatsoever or periodicals condemned by the local ordinaries, unless in the apostolic indult express permission be given to read and keep books by whomsoever prohibited. And those who have obtained permission to read prohibited books must remember that they are bound by grave precept to keep books of this kind in such a manner that they may not fall into the hands of others.

The Denunciation of Bad Books

27. Although all Catholics, especially the more learned, ought to denounce pernicious books either to the bishops or to the Holy See, this duty belongs more especially to apostolic nuncios and delegates, local ordinaries, and rectors of universities.

28. It is expedient, in denouncing bad books, that not only the title of the book be expressed, but also, as far as possible, the reasons be explained why the book is considered worthy of censure. Those to whom the denunciation is made will remember that it is their duty to keep secret the names of the denouncers.

29. Ordinaries, acting even as delegates of the Apostolic See, must be careful to prohibit evil books or other writings published or circulated in their dioceses, and to withdraw them from the hands of the faithful. Such works and writings as appear to require a more careful examination, or concerning which a decision of the Supreme Authority may seem desirable in order to procure a more salutary effect, should be referred to the judgment of the Apostolic See.

Article II

The Censorship of Books

The Prelates Entrusted with the Censorship of Books

30. From what has been laid down above (No. 7), it is sufficiently clear what persons have authority to approve or permit editions and translations of the Holy Bible.

31. No one shall venture to republish books condemned by the Apostolic See. If, for a grave and reasonable cause,

any particular exception appears desirable in this respect, this can only be allowed on obtaining beforehand a license from the Sacred Congregation of the Index and observing the conditions prescribed by it.

32. Whatsoever pertains in any way to causes of beatification and canonization of the servants of God may not be published without the approval of the Congregation of Sacred Rites.

33. The same must be said of collections of decrees of the various Roman congregations: such collections may not be published without first obtaining the license of the authorities of each congregation, and observing the conditions by them prescribed.

34. Vicars-apostolic and missionaries-apostolic shall faithfully observe the decrees of the Sacred Congregation of Propaganda concerning the publication of books.

35. The approbation of books of which the censorship is not reserved by the present decrees either to the Holy See or to the Roman congregations, belongs to the ordinary of the place where they are published.

36. Regulars must remember that, in addition to the license of the bishop, they are bound by a decree of the Sacred Council of Trent to obtain leave for publishing any work from their own Superior. Both permissions must be printed either at the beginning or at the end of the book.

37. If an author, living in Rome, desires to print a book, not in the city of Rome but elsewhere, no other approbation is required beyond that of the cardinal-vicar and the master of the apostolic palace.

The Duty of Censors in the Preliminary Examination of Books

38. Bishops, whose duty it is to grant permission for the printing of books, shall take care to employ in the examination of them men of acknowledged piety and learning, concerning whose faith and honesty they may feel sure that they will show neither favor nor ill will, but, putting aside all human affections, will look only to the glory of God and the welfare of the people.

39. Censors must understand that, in the matter of various opinions and systems, they are bound to judge with a mind free from all prejudice, according to the precept of Benedict XIV. Therefore they should put away all attachment to their particular country, family, school, or institute, and lay aside all partisan spirit. They must keep before their eyes nothing but the dogmas of Holy Church, and the common Catholic doctrine, as contained in the decrees of general councils, the constitutions of the Roman Pontiffs, and the unanimous teaching of the Doctors of the Church.

40. If, after this examination, no objection appears to the publication of the book, the ordinary shall grant to the author, in writing and without any fee whatsoever, a license to publish, which shall be printed either at the beginning or at the end of the work.

The Books to be Submitted to Censorship

41. All the faithful are bound to submit to preliminary ecclesiastical censorship at least those books which treat of Holy Scripture, sacred theology, ecclesiastical history, canon law, natural theology, ethics, and other religious or

moral subjects of this character; and in general all writings specially concerned with religion and morality.

42. The secular clergy, in order to give an example of respect toward their ordinaries, ought not to publish books, even when treating of merely natural arts and sciences, without their knowledge.

They are also prohibited from undertaking the management of newspapers or periodicals without the previous permission of their ordinaries.

Printers and Publishers of Books

43. No book liable to ecclesiastical censorship may be printed unless it bear at the beginning the name and surname of both the author and the publisher, together with the place and year of printing and publishing. If in any particular case, owing to a just reason, it appears desirable to suppress the name of the author, this may be permitted by the ordinary.

44. Printers and publishers should remember that new editions of an approved work require a new approbation; and that an approbation granted to the original text does not suffice for a translation into another language.

45. Books condemned by the Apostolic See are to be considered as prohibited all over the world, and into whatever language they may be translated.

46. Booksellers, especially Catholics, should neither sell, lend, nor keep books professedly treating of obscene subjects. They should not keep for sale other prohibited books, unless they have obtained leave through the ordinary from the Sacred Congregation of the Index; nor sell such books to any person whom they do not prudently judge to have the right to buy them.

Penalties against Transgressors of the General Decrees

47. All and every one knowingly reading, without authority of the Holy See, the books of apostates and heretics defending heresy; or books of any author which are by name prohibited by Apostolic Letters; also those keeping, printing, and in any way defending such works; incur *ipso facto* excommunication reserved in a special manner to the Roman Pontiff.

48. Those who, without the approbation of the ordinary, print, or cause to be printed, books of Holy Scripture, or notes or commentaries on the same, incur *ipso facto* excommunication, but not reserved to any one.

49. Those who transgress the other prescriptions of these general decrees shall, according to the gravity of their offense, be seriously warned by the bishop, and, if it seem expedient, may also be punished by canonical penalties.

We decree that these presents, and whatsoever they contain, shall at no time be questioned or impugned for any fault of subreption, or obreption, or of Our intention, or for any other defect whatsoever; but are and shall be ever valid and efficacious, and to be inviolably observed, both judicially and extra-judicially, by all of whatsoever rank and pre-eminence. And We declare to be invalid and of no avail, whatsoever may be attempted knowingly or unknowingly contrary to these, by any one, under any authority or pretext whatsoever; all to the contrary notwithstanding.

And We will that the same authority be attributed to copies of these Letters, even if printed, provided they be signed by the hand of a notary, and confirmed by the seal

of some one in ecclesiastical dignity, as to the indication of Our will by the exhibition of these presents.

No man, therefore, may infringe or temerariously venture to contravene this document of Our constitution, ordination, limitation, derogation, and will. If any one shall so presume, let him know that he shall incur the wrath of Almighty God, and of the Blessed Apostles Peter and Paul.

Given at St. Peter's in Rome, in the year of the Incarnation of Our Lord one thousand eight hundred and ninety-seven, on the twenty-fifth day of January, in the nineteenth year of Our Pontificate.

A. CARD. MACCHI.

A. PANICI, Subdatary.

Visa.

De Curia: J. DE AQUILA VISCONTI.

L. ✠ S.

Registered in the Secretariate of Briefs.

I. CUGNONI.

APPENDIX B

BETROTHAL AND MARRIAGE

THE Sacred Congregation of the Council, August, 2, 1907, issued the following decree concerning *sponsalia* (*Espousals, Betrothal, Engagement*), and Matrimony. Hitherto the Church has imposed no conditions with respect to the *external form* as necessary for the validity of *sponsalia.* Whether they were *solemn* or *private, public* or *clandestine, written* or *verbal,* the Church has always accepted them as valid and as having their *canonical* effects. These effects are two: 1st, the *impedient* impediment, making the marriage of either of the parties with a third person *unlawful,* as long as the *sponsalia* are not legitimately dissolved, but not *invalid;* 2d, the *diriment* impediment, called *publicæ honestatis,* absolutely invalidating the marriage of either of the betrothed with one of the blood relations of the other in the first degree.

According to the present decree all private and clandestine *sponsalia* are declared *canonically* invalid, *i.e.,* they will not have the *canonical* effects mentioned above. To be *canonically* valid they must be from Easter, April 19, 1908, contracted in writing, signed by both the betrothed, and by the parish priest, *or* the ordinary, *or* at least two witnesses. If either or both the parties to the *sponsalia* be unable to write, this fact is to be noted in the document, and another witness is required to sign

it, in addition to the parish priest, *or* the ordinary, *or* the two witnesses.

The Church does not prescribe that *sponsalia* should be contracted before marriage, for the latter is valid without the former taking place at all, but she desires that *private* and *clandestine* betrothals should be discouraged, and that *public* and *solemn* engagements should be encouraged. Private and clandestine espousals are not prohibited or declared unlawful, but they are *canonically* invalid, *i.e.*, they will not be recognized by the Church, and will not have any *canonical* effects.

This new decree unifies the law of the celebration of marriage throughout the world. It binds no one outside the Church, except *apostates* and the *excommunicated*, and it binds all within the Church; it is not *local*, but *personal*. Only those marriages are valid which are contracted before the parish priest or the ordinary of the place or a priest delegated by either of these. When it has been impossible for a whole month to have the presence of the competent priest or the ordinary of the place, the presence of the priest is not necessary for the validity. The competent priest for the celebration of marriage is every priest duly invested with the care of souls in a specified district, and in missionary lands every priest who is duly deputed by the superior of the mission for the general care of souls. The priest's presence must be *willing*, and is valid for the marriage not only of persons living in his district, but of those from other places also. In cases of imminent danger of death any priest may validly assist at the marriage. At all marriages the presence of two witnesses is required for their validity.

For the *licit* celebration of marriage among Catholics,

a residence for the space of a month of one of the contracting parties in the place of the celebration is necessary; for the *validity* of the marriage no residence at all is required.

A peculiarity in the new regulation is that the marriages must be entered not only in the matrimonial register, but also in the baptismal register.

The text of the important decree is as follows:

DECREE CONCERNING SPONSALIA AND MATRIMONY

ISSUED BY THE SACRED CONGREGATION OF THE COUNCIL BY THE ORDER AND WITH THE AUTHORITY OF OUR HOLY FATHER POPE PIUS X

The Council of Trent (Cap. I, Sess. XXIV de Reform. Matrim.), made prudent provision against the rash celebration of clandestine marriages, which the Church of God for most just reasons has always detested and forbidden, by decreeing: "Those who otherwise than in the presence of the parish priest himself or of another priest acting with the license of the parish priest or of the ordinary, and in the presence of two or three witnesses, shall attempt to contract matrimony, the Holy Synod renders them altogether incapable of contracting marriage thus, and decrees that contracts of this kind are null and void."

But as the same Sacred Council prescribed that said decree should be published in all the parishes and was not to have force except in those places in which it had been promulgated, it has happened that many places in which the publication has not been made have been deprived of the benefit of the Tridentine law, and are still without it, and

continue to be subject to the doubts and inconveniences of the old discipline.

Nor has all difficulty been removed in those places where the new law has been in force. For often there has been grave doubt in deciding as to the person of the parish priest before whom a marriage is to be celebrated. The canonical discipline did indeed decide that he is to be regarded as the parish priest in whose parish one or other of the contracting parties has his or her domicil or quasi-domicil. But as it is sometimes difficult to judge whether a quasi-domicil really exists in a special case, not a few marriages were exposed to the danger of nullity; many, too, either owing to ignorance or fraud, have been found to be quite illegitimate and void.

These deplorable results have been seen to happen more frequently in our own time on account of the increased facility and celerity of intercommunication between the different countries, even those most widely separated. It has therefore seemed expedient to wise and learned men to introduce some change into the law regulating the form of the celebration of marriage, and a great many bishops in all parts of the world, but especially in the more populous States where the necessity appears more urgent, have petitioned the Holy See to this end.

It has been asked also by very many bishops in Europe, as well as by others in various regions, that provision should be made to prevent the inconveniences arising from *sponsalia;* that is, mutual promises of marriage, privately entered upon. For experience has sufficiently shown the many dangers of such *sponsalia;* first as being an incitement to sin and causing the deception of inexperienced girls, and afterward giving rise to inextricable dissensions and disputes.

Influenced by these circumstances, our Holy Father Pope Pius X desiring, in the solicitude he bears for all the churches, to introduce some modifications with the object of removing these drawbacks and dangers, committed to the Sacred Congregation of the Council the task of examining into the matter and of proposing to himself the measures it should deem opportune.

He was pleased also to have the opinion of the commission appointed for the codification of canon law, as well as of the eminent cardinals chosen on this special commission for the preparation of the new code, by whom, as well as by the Sacred Congregation of the Council, frequent meetings have been held for this purpose. The opinions of all having been taken, His Holiness ordered the Sacred Congregation of the Council to issue a decree containing the laws, approved by himself on sure knowledge and after mature deliberation, by which the discipline regarding *sponsalia* and marriage is to be regulated for the future and the celebration of them carried out in a sure and orderly manner.

In execution, therefore, of the apostolic mandate the Sacred Congregation of the Council by these letters lays down and decrees what follows.

Concerning Sponsalia

I. Only those are considered valid and produce canonical effects which have been contracted in writing signed by both the parties and by either the parish priest or the ordinary of the place, or at least by two witnesses.

In case one or both the parties be unable to write, this fact is to be noted in the document and another witness is to

be added who will sign the writing as above, with the parish priest or the ordinary of the place or the two witnesses.

II. Here and in the following articles by "parish priest" is to be understood not only a priest legitimately presiding over a parish canonically erected, but in regions where parishes are not canonically erected the priest to whom the care of souls has been legitimately entrusted in any specified district and who is equivalent to a parish priest; and in missions where the territory has not yet been perfectly divided, every priest generally deputed by the superior of the mission for the care of souls in any station.

Concerning Marriage

III. Only those marriages are valid which are contracted before the parish priest or the ordinary of the place or a priest delegated by either of these, and at least two witnesses, according to the rules laid down in the following articles, and saving the exceptions mentioned under VII and VIII.

IV. The parish priest and the ordinary of the place validly assist at a marriage:

a. Only from the day they have taken possession of the benefice or entered upon their office, unless they have been by a public decree excommunicated by name or suspended from the office;

b. Only within the limits of their territory; within which they assist validly at marriages not only of their own subjects, but also of those not subject to them;

c. Provided when invited and asked, and not compelled by violence or by grave fear, they demand and receive the consent of the contracting parties.

V. They assist licitly:

a. When they have legitimately ascertained the free state of the contracting parties, having duly complied with the conditions laid down by the law;

b. When they have ascertained that one of the contracting parties has a domicil or at least has lived for a month in the place where the marriage takes place;

c. If this condition be lacking, the parish priest and the ordinary of the place, to assist licitly at a marriage, require the permission of the parish priest or the ordinary of one of the contracting parties, unless it be a case of grave necessity, which excuses from this permission;

d. Concerning persons without fixed abode (*vagos*), except in case of necessity it is not lawful for a parish priest to assist at their marriage, until they report the matter to the ordinary or to a priest delegated by him and obtain permission to assist;

e. In every case let it be held as the rule that the marriage is to be celebrated before the parish priest of the bride, unless some just cause excuses from this.

VI. The parish priest and the ordinary of the place may grant permission to another priest, specified and certain, to assist at marriages within the limits of their district.

The delegated priest, in order to assist validly and licitly, is bound to observe the limits of his mandate and the rules laid down above, in IV and V, for the parish priest and the ordinary of the place.

VII. When the danger of death is imminent and where the parish priest or the ordinary of the place or a priest delegated by either of these can not be had, in order to provide for the relief of conscience and (should the case require it) for the legitimation of offspring, marriage may be con-

tracted validly and licitly before any priest and two witnesses.

VIII. Should it happen that in any district the parish priest or the ordinary of the place or a priest delegated by either of them, before whom marriage can be celebrated, is not to be had, and that this condition of things has lasted for a month, marriage may be validly and licitly entered upon by the formal declaration of consent made by the spouses in the presence of two witnesses.

IX. *a.* After the celebration of a marriage, the parish priest or he who takes his place is to write at once in the "Book of Marriages" the names of the couple and of the witnesses, the place and day of the celebration of the marriage, and the other details, according to the method prescribed in the ritual books or by the ordinary; and this even when another priest delegated either by the parish priest himself or by the ordinary has assisted at the marriage.

b. Moreover, the parish priest is to note also in the "Book of Baptisms," that the married person contracted marriage on such a day in his parish. If the married person has been baptized elsewhere, the parish priest who has assisted at marriage is to transmit, either directly or through the episcopal curia, the announcement of the marriage that has taken place, to the parish priest of the place where the person was baptized, in order that the marriage may be inscribed in the "Book of Baptisms."

c. Whenever a marriage is contracted in the manner described in VII and VIII, the priest in the former case, the witnesses in the latter, are bound conjointly with the contracting parties to provide that the marriage be inscribed as soon as possible in the prescribed books.

X. Parish priests who violate the rules thus far laid down are to be punished by their ordinaries according to the nature and gravity of their transgression. Moreover, if they assist at the marriage of anybody in violation of the rules laid down in *b* and *c* of V, they are not to appropriate the stole-fees, but must remit them to the parish priest of the contracting parties.

XI. *a*. The above laws are binding on all persons baptized in the Catholic Church, and on those who have been converted to it from heresy or schism (even when either the latter or the former have fallen away afterward from the Church) whenever they contract *sponsalia* or marriage with one another.

b. The same laws are binding also on the same Catholics as above, if they contract *sponsalia* or marriage with non-Catholics, baptized or unbaptized, even after a dispensation has been obtained from the impediment *mixtæ religionis* or *disparitatis cultus;* unless the Holy See decree otherwise for some particular place or region.

c. Non-Catholics, whether baptized or unbaptized, who contract among themselves, are nowhere bound to observe the Catholic form of *sponsalia* or marriage.

The present decree is to be held as legitimately published and promulgated by its transmission to the ordinaries, and its provisions begin to have the force of law from the solemn feast of the Resurrection of Our Lord Jesus Christ, next year 1908.

Meanwhile let all the ordinaries of places see that this decree be made public as soon as possible, and explained in the different parochial churches of their dioceses in order that it may be known by all.

These presents are to have force by the special order of our Most Holy Father Pope Pius X, all things, even those worthy of special mention, to the contrary notwithstanding.

Given at Rome on the 2d day of August, in the year 1907.

VINCENT,

Card. Bishop of Palestrina, *Prefect.*

C. DE LAI, *Secretary.*

By a decree of the Sacred Congregation on the Discipline of the Sacraments, May 14, 1909, Pius X declared and decreed that any priest who, according to art. VII of the decree *Ne temere* in a case of imminent danger of death when the parish priest or the local Ordinary or a priest delegated by either of them cannot be had, can validly and lawfully assist at a marriage in the presence of two witnesses, in the same circumstances can also dispense in all impediments, even though they be public, which annul marriage by ecclesiastical law, except those of the priesthood and affinity in the direct line *ex copula licita.*

APPENDIX C

THE ROMAN CURIA

WITH wise design the Pontiff Sixtus V, of holy memory, following in the footsteps of his predecessors and perfecting what had been begun by them, decided to increase the number and define the limits of the sacred bodies of cardinals, or the Roman Congregations, some of which had been already instituted for the transaction of certain matters. He, therefore, by the Apostolic Letters beginning with the word *Immensa*, of Jan. 22, 1587, established fifteen of these Congregations, that, "dividing among them and the other offices of the Roman Curia the immense weight of the cares and affairs" habitually brought before the Holy See, it might be no longer necessary to treat of and deliberate upon so many things in Consistory, and at the same time that controversies might be more diligently gone into and a more speedy and easier solution be given to the business of those who apply to the Supreme Pontiff from all sides in the interests of religion and devotion, to seek justice, to ask favors, or for other reasons.

The utility accruing from these Sacred Congregations for the maintenance of ecclesiastical discipline, the administration of justice, and the relief of the Roman Pontiffs themselves overpowered by daily increasing cares and affairs, is shown by the history of the Church and is well known to all.

But in the course of time the organization of the Roman Curia, mainly effected by Sixtus V in the above-mentioned Letters Apostolic, lapsed from its original state. The number of the Roman Congregations was increased or diminished according to the necessities of time and circumstance, and even the jurisdiction originally attributed to the different Congregations underwent changes either by new enactments of the Roman Pontiffs or by the gradual growth of customs which became accepted. The result is that to-day the jurisdiction, or *competence*, of each of them is not quite clear to all nor is it well apportioned, that many of the Sacred Congregations have the right to define the law on the same matters, and that some of them have been reduced to the transaction of very little business while others are overcharged with work.

For these reasons many bishops and thoughtful men, especially the Roman cardinals, both in writing and orally, and both with Our Predecessor Leo XIII, of happy memory, and with Ourself, have frequently urged that suitable remedies should be provided for the inconveniences above mentioned. And We took pains to make partial provision in Our Letters *Romanis Pontificibus* of Dec. 7, 1903, by those *Quæ in Ecclesiæ bonum* of Jan. 28, 1904, and again by those *Sacræ Congregationi super negotiis* of May 26, 1906.

But now that there is also the question of the codification of the ecclesiastical laws, it has seemed highly fitting that a beginning should be made with the Roman Curia so that, once this has been organized suitably and in a manner clear to all, it may be in a position to perform more easily its work for the Roman Pontiff and the Church and to be of the greatest possible assistance.

Wherefore, after having taken counsel with several of the Roman cardinals, We have determined and We do decree that the Congregations, Tribunals, and Offices which compose the Roman Curia and to which the affairs of the universal Church are referred for treatment shall, after the autumn holidays of the current year, that is, after the third day of November 1908, be only those, besides the usual sacred consistories, which are defined in the present constitution, and which shall remain divided and constituted in number, order, and competence by the laws which here follow:

The Sacred Congregations

I

The Congregation of the Holy Office

1. This Sacred Congregation, over which the Supreme Pontiff presides, guards the teaching of faith and morals.

2. To it alone, therefore, belongs the judgment of heresy and of other crimes which lead to a suspicion of heresy.

3. To it also is devolved all matters concerning indulgences, both as regards the doctrine and as concerns practice.

4. Everything appertaining to the precepts of the Church, such as the abstinences, fasts, and feasts to be observed, is now transferred from this Sacred Congregation and handed over to the Congregation of the Council; everything relating to the election of bishops belongs to the Consistorial Congregation; the relaxation of religious vows made in religious institutes belongs to the Congregation assigned for the affairs of religious societies.

5. Although a special Congregation is established *for the discipline of the sacraments*, nevertheless the Holy Office preserves intact its faculty to treat of those questions which concern what is known as the Pauline Privilege and the impediments *disparitatis cultus* and *mixtæ religionis*, as well as those connected with dogmatic teaching on matrimony, as also on the other sacraments.

II

The Consistorial Congregation

1. This Sacred Congregation comprises two distinct parts.

2. To the first appertains not only the charge of preparing what is to be done in the consistories but also, in places not subject to the Congregation de Propaganda Fide, of founding new dioceses, and *chapters* both *cathedral* and *collegiate;* of dividing dioceses already constituted; of electing bishops, apostolic administrators, and coadjutors and auxiliaries of bishops; of instituting the canonical investigations or *processus* concerning those to be elected and of diligently sifting the acts of these processes; of ascertaining the knowledge of those who are to be elected. But when the men to be elected, or the dioceses to be constituted or divided, are outside Italy, the officials of the office for public affairs, commonly called the *Secretariate of State*, shall themselves receive the documents and draw up the statement [*positionem*] to be submitted to the Consistorial Congregation.

3. The second part embraces all those matters which concern the government of the different dioceses, not subject to the Congregation de Propaganda Fide, and

which hitherto belonged to the Congregation of the Bishops and of the Council, and are now transferred to the Consistorial Congregation. To this latter, therefore, for the future belongs the vigilance over the fulfilment or non-fulfilment of the obligations by which ordinaries are bound, the cognizance of the written reports of bishops on the state of their dioceses, the ordering of apostolic visitations, the examination of what has been done in them, and after a faithful exposition made to Us each time, the ordering of what may seem necessary or opportune; finally, everything appertaining to the government, discipline, temporal administration, and studies of the seminaries.

4. It shall be the province of this Congregation, when conflicts of law arise, to solve doubts concerning the *competence* of the Sacred Congregations.

5. Of this Sacred Council the Supreme Pontiff is to be the prefect. And to it the Cardinal-Secretary of the Holy Office and the Cardinal-Secretary of State shall always be attached *ex officio*, besides the others whom the Supreme Pontiff may think well to make members of it.

6. The secretary shall always be a cardinal selected for this office by the Supreme Pontiff; with him there shall be a prelate with the title of *Assessor* who shall also fill the office of Secretary of the Sacred College of the Fathers-Cardinals, and under him a sufficient number of officials.

7. Consulters of this Congregation shall be the Assessor of the Holy Office, and the Secretary of the Congregation for Extraordinary Ecclesiastical Affairs while in office; to these shall be added others elected by the Supreme Pontiff.

III

Congregation on the Discipline of the Sacraments

1. To this Sacred Congregation is assigned the entire legislation concerning the discipline of the seven sacraments, without prejudice to the authority of the Congregation of the Holy Office according to the provisions above defined, and of the Congregation of Sacred Rites regarding the ceremonies to be observed in the performing, administration, and reception of the sacraments, which were hitherto decided or granted by other Congregations, Tribunals, or Offices of the Roman Curia.

2. So also to this Congregation are assigned all those matters connected with the discipline of matrimony, such as dispensations *in foro externo* for the poor as well as for the rich, *sanationes in radice,* dispensations *super rato,* the separation of married couples, the restitution of birthright or legitimation of offspring; as well as in the discipline of the other sacraments, such as dispensations for candidates for Orders, without prejudice to the right of the Congregation for the Affairs of Religious to regulate the ordinations of Religious; dispensations concerning the place, time, and conditions for the reception of the Eucharist, the offering of the Holy Sacrifice, the reservation of the Most August Sacrament, and the other matters of the same nature.

3. The same Congregation decides, without prejudice to the right of the Holy Office, questions regarding the discipline of the sacraments. But when this Congregation decides that any such questions are to be treated by judicial

process, then it shall hand them over to the tribunal of the Sacred Roman Rota.

4. For this Congregation, as well as for the others that follow, there shall be a cardinal-prefect who shall preside over the Sacred Order consisting of a number of fathers-cardinals to be elected by the Supreme Pontiff, with a *secretary* and the other necessary officials and consulters.

IV

The Congregation of the Council

1. To this Sacred Congregation is committed that branch of affairs which relates to the universal discipline of the secular clergy and of the Christian people.

2. It is, therefore, its province to provide for the observance of the precepts of the Church, such as fasts (except the Eucharistic fast which belongs to the Congregation on the Discipline of the Sacraments), abstinence, tithes, the observance of feasts, with the faculty of releasing the faithful from these laws on occasion; the government of everything relating to parish priests and canons and of all things affecting pious sodalities, pious unions, pious legacies, pious works, honorariums for masses, benefices or offices, ecclesiastical property, funds of money, diocesan tributes, and other affairs of the same kind. It sees also to everything relating to ecclesiastical immunity. To the same Congregation is reserved the faculty of dispensing from the conditions required for the obtaining of benefices when the conferring of these belongs to the ordinary.

3. To it also appertains all that regards the celebration and recognition of councils and gatherings or *conferences* of bishops, as the special Congregation till now in existence for the revision of councils is suppressed.

4. This Congregation, too, is the competent or legitimate tribunal in all causes relating to the affairs committed to it which it shall decide are to be treated in a disciplinary manner or *in linea disciplinari*, as the phrase goes; the others are to be handed over to the Sacred Roman Rota.

5. To the Congregation of the Council is added and united as a special Congregation that known as the *Lauretan*.

V

The Congregation for the Affairs of Religious

1. This Sacred Congregation decides only those matters throughout the world which relate to the affairs of Religious of both sexes, whether bound by simple or solemn vows, and of those who, although without vows, lead a life in common after the manner of Religious, and also of secular third orders, and whether the matters to be treated are between Religious themselves or relate to them and others.

2. It, therefore, assumes the regulation of all matters arising either between bishops and Religious of both sexes or between Religious themselves. It is also the competent tribunal in all causes which are treated in a disciplinary manner, or *in linea disciplinari*, when a Religious is either defendant or complainant; other causes are to be handed over to the Sacred Roman Rota, without prejudice, however, to the right of the Holy Office in the causes appertaining to that Sacred Congregation.

3. Finally, to this Sacred Congregation is reserved the concession of dispensations from the common law for Religious.

VI

The Congregation de Propaganda Fide

1. The jurisdiction of this Sacred Congregation is limited to those regions in which the sacred hierarchy not being yet constituted the missionary state still exists. But as there are some regions which, although they possess a hierarchy, are still somewhat inchoate, it is Our will that these be subject to the Congregation de Propaganda Fide.

2. Wherefore from the jurisdiction of the Congregation de Propaganda Fide We decree the transference under the common law: in *Europe,* of the ecclesiastical provinces of England, Scotland, Ireland, and Holland, and of the diocese of Luxembourg; in *America,* of the ecclesiastical provinces of the Dominion of Canada, Newfoundland, and the United States. Hence, affairs relating to these places shall for the future not be treated by the Congregation de Propaganda Fide, but by the other Congregations according to the nature of the business.

3. The other ecclesiastical provinces and dioceses hitherto subject to the jurisdiction of the Congregation de Propaganda Fide, are to remain under its right and authority. So too, We decree that to it shall belong all vicariates apostolic, prefectures, and missions whatsoever, including those which are at present in a special manner under the Congregation for Extraordinary Ecclesiastical Affairs.

4. Still, in order to provide for unity of government, it is Our will that the Congregation de Propaganda Fide hand over to the other special Congregations everything concerning the Faith, or Matrimony, or the discipline of the sacred rites.

5. As regards Religious, the same Congregation takes upon itself everything affecting Religious, whether singly or in bodies, considered as missionaries. But all things affecting Religious as Religious, both individually and as bodies, it shall remit or leave to the Congregation for the Affairs of Religious.

6. To it is united the Congregation for the Affairs of Oriental Rites which are to continue entirely as before.

7. The special prefecture for administration ceases to exist, and the administration of all the property including that of the *Reverenda Camera Spoliorum* is committed to the Congregation de Propaganda Fide itself.

8. With this Sacred Congregation is joined the Commission for the *Union of the Dissident Churches.*

VII

The Congregation of the Index

1. For the future it shall be the province of this Sacred Congregation not only to examine diligently the books delated to it, to prohibit them if this should seem well, and to concede dispensations; but also officially to investigate in the best way available whether writings of any kind that should be condemned are being circulated; and to remind the ordinaries how solemnly they are bound to condemn pernicious writings and to denounce them to the Holy See in conformity with the constitution *Officiorum* of January 25, 1897.

2. As the prohibition of books has very frequently the scope of defence of the Catholic faith, which is also the object of the Congregation of the Holy Office, We decree that in future in all things, and in those alone, relating to

the prohibition of books, the fathers-cardinals, the consulters, and the officers of both Congregations, may communicate with one another and that all of them in this matter shall be bound by the same secret.

VIII

The Congregation of the Sacred Rites

1. This Sacred Congregation has the right of examining and decreeing all things which relate proximately to the sacred rites and ceremonies of the Latin Church, but not those which in a broader sense are related to the sacred rites, such as the laws of precedence and other matters of that kind which are to be treated either according to judicial process, or in a disciplinary manner or *in linea disciplinari*.

2. It is, therefore, especially its province to watch over the diligent observance of the sacred ritual and ceremonial in the celebration of Mass, in the administration of the sacraments, in the performance of the divine offices, in short over all that regards the worship of the Latin Church; to grant opportune dispensations; to bestow insignia and privileges of honor, both personal and temporary, as well as local and perpetual, relating to the sacred rites and ceremonies, and to prevent the introduction of abuses in these matters.

3. Finally, it has to deal with everything relating in any way to the beatification and canonization of the saints or to the sacred relics.

4. To this Congregation are joined the Liturgical Commission, the Historico-Liturgical Commission, and the Commission for Sacred Music.

IX

The Ceremonial Congregation

This Sacred Congregation retains all the rights hitherto attributed to it; hence to it appertain the regulation of the ceremonies to be observed in the pontifical chapel and court, and of the sacred functions which the fathers-cardinals perform outside the pontifical chapel; it also takes cognizance of the question affecting the precedence both of the fathers-cardinals and of the legates whom many nations send to the Holy See.

X

The Congregation for Extraordinary Ecclesiastical Affairs

This Sacred Congregation concerns itself only with those matters which are submitted to its examination by the Supreme Pontiff through the Cardinal-Secretary of State, and especially with such of them as have some connection with civil laws and relate to the pacts entered upon with different States.

XI

The Congregation of Studies

To this Sacred Congregation is committed the regulation of the studies which are to be gone through in the major athenæums known as universities or faculties, which depend on the authority of the Church, including those which are administered by the members of religious societies. It examines and approves new institutions; it grants the faculty for the conferring of academic degrees, and may confer them itself in the case of men distinguished for special learning.

Tribunals

I

The Sacred Penitentiaria

The jurisdiction of this sacred court or tribunal is limited entirely to those things which regard the *forum internum*, non-sacramental as well as sacramental. Hence, matrimonial dispensations of the *forum externum* being assigned to the Congregation for the Discipline of the Sacraments, this tribunal for the *forum internum* concedes favors, absolutions, dispensations, commutations, sanations, condonations; moreover, it examines questions of conscience and decides them.

II

The Sacred Roman Rota

As the Tribunal of the Sacred Roman Rota, which in former times was an object of universal praise, has in these times through various causes almost ceased to judge, the result has been that the Sacred Congregations have been burdened excessively with forensic cases. To meet this evil, following the lines laid down by Our Predecessors Sixtus V, Innocent XII, and Pius VI, We not only ordain "that for the future contentious cases, civil as well as criminal, requiring judicial procedure with trial and proofs, shall not be received or taken cognizance of by the Sacred Congregations" (Letter of the Secretariate of State, April 17, 1728); but We moreover decree that all contentious cases, not major ones, which are treated in the Roman Curia, shall for the future devolve to the Tribunal of the Sacred

Roman Rota, which We do by these Letters again call into exercise according to the *Special Law* which We place in the appendix of the present constitution, without prejudice, however, to the rights of the Sacred Congregations as above set forth.

III

The Apostolic Segnatura

We have also deemed it well to restore the supreme Tribunal of the Apostolic Segnatura and by these present letters We do restore it, or rather We institute it in the manner determined in the above-mentioned Law, suppressing the ancient organization of the Papal Segnatura of Grace and Justice.

Offices

I

The Apostolic Cancelleria

1. This office has for president one of the cardinals of Holy Roman Church, who for the future shall assume the title of chancellor instead of vice-chancellor. According to very ancient custom he fulfils *ex officio* the office of notary in the Sacred Consistories.

2. Henceforth the sole proper function reserved to the office of the Cancelleria shall be that of forwarding *sub plumbo* the apostolic letters concerning the provision of consistorial benefices, the institution of new dioceses and chapters, and the transaction of the other greater affairs of the Church.

3. There shall be only one manner of forwarding these, that is *per viam Cancellariæ,* according to rules to be given

separately, the former methods known as *per viam secretam, de Camera,* and *de Curia* being suppressed.

4. The above-mentioned letters or *bulls* shall be sent by command of the Consistorial Congregation concerning the affairs belonging to its jurisdiction, or by command of the Supreme Pontiff concerning other affairs, the terms of the mandate being in each case observed to the letter.

5. With the suppression of the College of Prelates known as *Abbreviatores majoris vel minoris residentiæ,* or *de parco majori vel minori,* their office in the signing of Apostolic Bulls is transferred to the college of Prothonotaries-Apostolic called *participantes de numero.*

II

The Apostolic Dataria

1. This office is under the presidency of one of the cardinals of Holy Roman Church, who shall for the future have the title of Datary and not that of Pro-Datary.

2. For the future the one special function of the Dataria is to be that of taking cognizance of the fitness of those who aspire to non-consistorial benefices reserved to the Apostolic See; to draw up and forward the Apostolic Letters conferring these benefices; to dispense from the requisite conditions for the conferring of these benefices; to look after the pensions and charges which the Supreme Pontiff shall have imposed for the conferring of them.

3. In the performance of all this it shall observe the rules special to it which are to be given separately.

III

The Apostolic Camera

To this office belong the care and the administration of the property and temporal rights of the Holy See, especially during the periods of vacancy. It is presided over by a cardinal-chamberlain of Holy Roman Church, who in the fulfilment of his office during the vacancy of the See shall be governed by the rules contained in the constitution *Vacante Sede Apostolica* of December 25, 1904.

IV

The Secretariate of State

This office of which the supreme ruler is the Cardinal-Secretary of State, that is, of public affairs, will consist of three parts. The first part will be concerned with extraordinary affairs, which shall be submitted for examination to the Congregation assigned for them, the others being handed over, according to their nature, to the special Congregations to which they belong; the second shall deal with ordinary affairs, and to it, among other things, shall belong the right of granting all marks of honor, both ecclesiastical and civil, with the exception of those reserved to the prelate who presides over the pontifical household; the third shall occupy itself with the sending of the Apostolic briefs committed to it by the various Congregations. Over the first part shall preside the *secretary* of the Congregation for Extraordinary Ecclesiastical Affairs; over the second the *substitute* for ordinary affairs; over the third the *chancellor* of the Apostolic briefs. Among the presi-

dents of these parts the first is the secretary of the Sacred Congregation for Extraordinary Affairs, the second the *substitute* for ordinary affairs.

V

The Secretariates of Briefs to Princes and of Latin Letters

This double office shall perform as heretofore its functions of writing in Latin the acts of the Supreme Pontiff.

But for the future in all Apostolic Letters sent either by the *Cancelleria* or by the *Dataria* the beginning of the year shall be taken not from the day of the Incarnation of Our Lord, that is, from March 25, but from the first of January.

Wherefore the Congregations, Tribunals, and Offices which We have mentioned shall constitute the Roman Curia, preserving their own constitutions as in existence before these Our letters, unless in as far as they may have been changed by the above prescriptions or according to the law and to the rules, general or special, added to this constitution.

The Congregation known as that of the *Reverenda Fabrica S. Petri* shall for the future have as its sole care the domestic affairs of the Basilica of the Prince of the Apostles, in this observing to the letter the rules laid down by Benedict XIV in the constitution *Quanta curarum* of November 15, 1751.

The Commissions for *the promotion of the study of scripture* and *of history;* for *the administration of Peter Pence,* for *the preservation of the Faith in the city,* remain in their former state.

With the removal of the Congregation for *the apostolic visitation of the city,* its right and functions We transfer to a special commission of fathers-cardinals to be constituted at the vicariate of the city.

But for all and several of the above-mentioned Congregations, Tribunals, and Offices let this first of all be a solemn rule: that nothing grave and out of the ordinary be done until it shall have previously been made known to Us and to Our Successors for the time being by the rulers of the same.

Moreover all sentences whether of grace or justice require the pontifical approval, exception being made for those for which special faculties have been granted to the rulers of the said Offices, Tribunals, and Congregations, and always excepting the sentences of the tribunal of the Sacred Rota and of the Apostolic Segnatura passed by them within their competence.

To this constitution are added special laws, and rules both general and special, by which the discipline and the method of treating affairs in the Congregations, Tribunals, and Offices are regulated; which laws and rules We order to be scrupulously observed by all.

And these are to have force while the Apostolic See is occupied; for when it is vacant, the laws and rules laid down in the above-mentioned constitution *Vacante Sede Apostolica* are to hold.

Decreeing the present letters to be of force, valid, and efficacious, now and in the future, and to have and obtain their plenary and integral effects, and to be in all things and for all things of force on behalf of those whom it concerns or shall in any way concern for the time being, and that any attempt against these made by anybody shall be

null and void. Notwithstanding Our rule and that of the Apostolic Cancelleria regarding the non-abolition of acquired rights, and the Apostolic Constitution and Ordinances, or statutes based on any other sanction, customs, and anything else whatsoever, even those calling for special mention, to the contrary.

Given at Rome at St. Peter's in the year of the Incarnation of Our Lord one thousand nine hundred and eight, on the feast of the Holy Apostles Peter and Paul, June 29, in the fifth year of Our pontificate.

A. Card. Di Pietro,
Pro-Datary.

R. Card. Merry del Val,
Secretary of State.

Authenticated

I of the Viscounts De Aquila of the Curia.
Loco ✠ Plumbi.

Reg. in the Secr. of Briefs.

V. Cugnoni.

APPENDIX D

DECREE TO BISHOP OF LIVERPOOL

By the courtesy of the Right Reverend Bishop of Liverpool we have been favored with the following decree:

Beatissime Pater, Episcopus Liverpolitanus ad pedes Sanctitatis Tuæ provolutus, dubiorum sequentium de modo neo-conversos ab hæresi reconciliandi solutionem humiliter petit:

1. Utrum tam abiuratio hæresis quam neo-conversorum baptismus conditionatus, qui apud nos, iuxta Decretum XVI. primæ synodi provincialis Westmonasteriensis non fiat publice sed omnino privatim cum aqua lustrali et absque cæremoniis, coram Notario vel sacerdote ab Episcopo delegato nec non duobus saltem testibus semper fieri debeant?

2. Utrum forma absolutionis ab hæresi a sacerdote quem Episcopus delegaverit adhibenda incipere debeat a verbis "auctoritate Aplica, qua fungor in hac parte absolvo te," etc., an potius "auctoritate episcopali, mihi in hac parte commissa," etc.? Videtur enim potestas absolvendi in casibus hæresis ad forum externum Episcopi deductis apud nos ex potestate Episcopi ordinaria generatim procedere.

3. Utrum puellæ, quæ maiores sint duodecim annorum, minores vero quatuordecim, hæresis abiurationem facere et absolutionem a censuris recipere debeant? Regula enim Albitii (Collectanea S.C.P.F., 1680) tantum de pueris loqui

videtur "si debba esigere dai giovani avanti l'età di 14 anni la sola professione della fede cattolica." Lex vero communis puellas maiores duodecim annorum censuris ligari affirmat.

4. Utrum cærimoniæ baptismi solemnis adhibendæ sint in baptismo sub conditione iterando puerorum vel puellarum minorum septem annorum, (*a*) quorum baptismus in hæresi susceptus dubius iudicandus fuerit? (*b*) quorum de baptismo in ecclesia catholica forsan collato grave adsit dubium?

5. Utrum professio fidei iuxta regulam Albitii a minoribus quatuordecim annorum exigenda sit: (*a*) Professio fidei die 20 Julii 1859 Episcopo Philadelphi data, quæ incipit a verbis "Io NN. avendo avanti," etc.? (*b*) An symbolum Apostolorum? (*c*) An forsan professio fidei, quæ ex interrogationibus et responsis in ordine baptismi parvulorum constat, nempe "Credis in Deum Patrem, etc. — Credis in Jesum Christum, etc. — Credis in Spiritum Sanctum, etc. — Credo."?

6. Utrum neo-conversus dum fidei professionem pronuntiat codicem Evangelii ambabus manibus tangere debeat? Bis enim dicit "Evangeli che tocco colle proprie mani" Quare, etc., etc.

Liverpolii, die 29 Martii, 1906.

FERIA IV, DIE 3 JUNII, 1908

In Congne Generali S. R. U. Inquisitionis propositis suprascriptis dubiis R. P. D. Episcopi Liverpolitani, præhabitis RR. DD. Consultorum votis, Emi ac Rmi Dni in rebus fidei ac morum Inquisitores Generales, respondendum mandarunt:

Ad 1^{um}. Affirmative. Attamen quando huius normæ applicatio in particulari aliquo casu iudicio R. P. D. Episcopi, absque vero incommodo fieri nequit, tum eius arbitrio et prudentiæ a communi lege et praxi recedere relinquitur, sed semper ita ut abiuratio in exteriori foro compareat et probari valeat.

Ad 2^{um}. Affirmative ad primam partem, negative ad secundam.

Ad 3^{um}. Affirmative.

Ad 4^{um}. In utroque casu, si dubium sit rationabile, baptismus administretur secreto et cum cæremoniis in Rituali Romano præscriptis.

Ad 5^{um}. Uti possunt formula breviori iam a S. Officio adprobata in Philadelphiensi 20 Julii, 1890, uti in Collectanea S. C. de Prop. Fide, n. 1689.

Ad 6^{um}. Sufficit ut neo-conversus dum fidei professionem pronuntiat, codicem Evangelî una tantum manu tangat.

In sequenti vero feria V, d. 4 eiusdem mensis et anni SSmus D. N. Pius Div: Prov: Papa X., in audientia R. P. D. Adsessori S. Officii impertita, habita de supradictis relatione, resolutiones Emorum Patrum confirmavit.

Caesar Rossi, S. R. et U. I. Substus Notarius.

APPENDIX E

FIRST CONFESSION AND COMMUNION

A DECREE of the Sacred Congregation of the Sacraments, August 8, 1910, declared that the obligations of confession and communion begin to bind at the same time, and that this time is when a child begins to reason; that is, about the age of seven. In order that a child may be ready for his first communion a full and perfect knowledge of Christian doctrine is not necessary; it is only requisite that he knows in a measure, according to his capacity, the mysteries of the Faith that are necessary, *necessitate medii*, and that he knows the difference between the Eucharist and common bread. The obligation of the precept of confession and communion, which binds a child, falls especially on those who ought to have charge of him; that is, on the parents, confessor, teachers, and parish priest. It belongs to the father, or to him who holds the father's place, and to the confessor to admit a child to his first communion.

A SHORT HISTORY OF MORAL THEOLOGY

ETHICS has a special place in the Christian religion. Lactantius, writing under the Emperor Constantine, points out this fundamental difference between paganism and the true religion. Pagan religion, he says, is concerned only with external rites and ceremonies performed in honor of the gods; it gives no precepts of righteousness and virtue; it does not form and cultivate men's characters.[1] On the other hand, ethics forms an essential part of the Christian religion. Christ was called Jesus because He came among us to save us from our sins. This He did not only by atoning for them, but by His example, His teaching, and His grace He showed us how to lead good lives and enabled us to do it. He came to do and to teach, so that not only His words but His actions, too, were lessons to us in conduct. He proposed Himself to us as the Way by which we should walk; He bade us follow His example; He taught us to learn of Him meekness, humility, and all virtues. In Him God, our Creator and Lord, was revealed to us; He is our first beginning and last end. To Him we must refer and order our whole lives and our every action. We are His stewards, and when life comes to an end each of us will be called upon to render a strict account to Him, as our judge, of every thought, word, and action of

[1] De Divinis Instit., iv, c. 3.

our lives. Heaven will be the reward of the faithful servant, eternal suffering in hell will be the just punishment of the wicked.

Before finally quitting the earth Our Lord founded His Church, a hierarchical society of men, to continue the work which He had begun for the sanctification and salvation of the whole human race. His last solemn commission to His apostles was a command to teach men to observe all that He had commanded; certain truths had been revealed to them concerning God, as well as moral rules for their guidance, but even the truths concerning God were not merely speculative; they, too, were revealed for the sanctification and salvation of men. A duty of submission of the intellect, under pain of eternal damnation, was laid on all who heard the Gospel preached. The basis of Christian morality thus rests firmly established on the word of God, requiring unwavering faith, not on the uncertain and shifting sands of human opinion. That Gospel contained not only moral precepts which are obligatory on all, but counsels also of great perfection which those who had the moral strength were encouraged to adopt as rules for the conduct of their lives. The perfect holiness of God Himself was held up as the model which they were to imitate and the lofty ideal at which they were ever to aim.

This revelation of Christ was committed to the Church as a sacred deposit to be faithfully kept, guarded from all admixture of error, and diligently preached to men for their instruction, guidance, sanctification, and salvation. The Catholic Church has always understood that this was the object of her foundation by Jesus Christ. That was her mission, to preach the Gospel, to keep the deposit of faith, to teach what Christ had revealed, and not to allow

it to be changed or corrupted even by an angel from heaven. It is the boast of the Catholic Church that by the assistance which Christ promised her, through the constant guidance of the indwelling Spirit of Truth which He sent down upon her, she has faithfully accomplished her task. In spite of enemies within and without, in defiance of the hostile powers of hell and of the unbelieving world, she has persisted through the ages in preaching in season and out of season the divine revelation which was committed to her faithful keeping. At first sight it might seem that no history of such a system of doctrine is possible. History is the scientific narration of the varying fortunes and changes which befall the subject of it. What history can there be of a system of doctrine which has always been the same?

The Christian revelation as taught by the Catholic Church does indeed always remain the same in itself, objectively, as it was completed when the last of the apostles died. This revelation, and nothing else, the Church was commissioned to keep and to preach to the end of time for the salvation of men. It is the Church's greatest boast, as it is her highest claim to our gratitude, that she has ever preserved unsullied through the ages the divine teaching of Jesus of Nazareth. No man ever taught like Him. The moral doctrine which He inculcated by word and by deed is the loftiest ideal of conduct which has ever been manifested to the world. It cannot be improved upon, and it is impious to attempt to change it. The Catholic denies that it has been changed in the Catholic Church. Non-Catholic historians of Christian morals profess to discover instances of change, but this is due to their own philosophical or religious presuppositions. Thus when the Lutheran Dr. Luthardt discovers in the "Didaché,"

written as he acknowledges at the end of the first century, "the beginnings of a false view of works," [1] we reply that the same view of works appears in the documents that make up the New Testament, and that it is not false. Lecky discovered a change of view as to the lawfulness of taking human life when Christianity became the official religion of the Roman Empire.[2] In proof of this he quotes Lactantius and one or two other Fathers who held that it is never lawful to take human life. It would not be difficult to quote instances of Christian writers up to our own days who have held the same doctrine, and one might deduce therefrom an argument to show either that Christian morality had progressed, or deteriorated, or had remained stagnant for nineteen centuries, according to the exigencies of one's philosophical system. Harnack discovers the sources of Catholic monachism in the writings of St. Methodius.[3] The Catholic sees them writ large in the Gospel of St. Matthew.

These instances will show why the Catholic cannot accept the accounts of growth, change, and decay which are given in many so-called histories of Christian morals. Nevertheless, he allows that there is a progress and development which admits of being traced historically. The Catholic Church has always been explicit on this point. After teaching that the revealed doctrines of the Faith were not proposed by God to man's intellect to be improved upon like some philosophical system, but were committed to the Church as a divine deposit to be faithfully kept and infallibly explained, the Council of the

[1] History of Christian Ethics, p. 117.
[2] History of European Morals, ii, p. 42.
[3] History of Dogma, iii, p. 110.

Vatican could find no better terms in which to describe true development of that doctrine than those which had been used by St. Vincent of Lerins in the fifth century.

"Therefore," it says, "let the understanding, knowledge, and wisdom of each and of all, of individuals as well as of the whole Church, increase and make much and great progress through the ages and the centuries; but only in its own line, that is, in the same truth, in the same sense, and in the same thought." [1] Change in Christian dogma and moral we refuse to accept or to acknowledge; we readily admit that there has been and ought to be development. The precepts of Christian morality have not always been equally well understood; what was obscure and uncertain has been made more clear and certain. The existence of different conditions, circumstances, and wants, in different ages and countries, necessitated some change in the adjustment of the teaching to the varying surroundings. New duties arose from new positive legislation. Besides, the science of Christian morals is not a mere exposition of the moral precepts of the Gospel and of the positive legislation of the Church. Books have been written containing such an exposition in the very words of Scripture, like the "Speculum" of St. Augustine, and the "Scintillæ" attributed to Venerable Bede,[2] but such as these are not works of moral theology. The science of moral theology arranges its subject-matter in an orderly and logical way; it shows the grounds and the reasons of the doctrine, it harmonizes part with part so as to form a compact and systematic body of doctrine. All this is the work of time and of many minds, and it admits of his-

[1] Vatican, sess. iii, c. 4.

[2] Migne, P. L. 88, 598.

torical treatment. In the brief space at our disposal we propose to trace at any rate the chief stages in the development of Catholic moral theology. Our history may conveniently be divided into three periods; the first will embrace the age of the Fathers, the second that of the scholastics, the third will be the modern period.

Section I

The Patristic Period

The end for which Jesus Christ established His Church was the sanctification and salvation of souls. This end the Church was to obtain chiefly by preaching the Gospel which her Founder had revealed and by administering the sacraments which He had instituted.[1] Men were to be sanctified and prepared for eternity by holy living through the grace of God communicated to them principally by means of the sacraments. The Gospels contain a short summary of the general teaching of Jesus Christ; this is developed somewhat in certain directions in the other writings of the New Testament, but the preachers of the Word soon found it convenient to have by them brief summaries of the moral teaching of Our Lord by itself. This need was met by such works as the "Didaché," or "Teaching of the Twelve Apostles," composed about the end of the first century, and the "Pastor" of Hermas, written a little later. It would be utterly impossible to give even an outline of the ethical works of all the Fathers of the Church. Together they form a very voluminous and complete course of moral theology, and more than one such

[1] Matt. xxviii. 19, 20.

course has been put together by simply printing a consecutive selection of their works. Thus in 1791 an Italian priest, Angelo Cigheri, published at Florence his "Veterum Patrum Theologia Universa," in thirteen volumes quarto, of which the three last are devoted to morals. A fairly complete catalogue of ethical works by the Fathers will be found in the indices of Migne's "Patrology," arranged under the separate headings which figure in our modern manuals of moral theology. All that we can do here is to select a few typical works which exhibit the gradual development of the science of Christian Ethics. The "Didaché" may be looked upon as the first handbook of morals which has come down to us, and it will be worth while to give a short analysis of its contents.

This first handbook of moral theology begins with the first general principle of ethics. All righteousness is summed up in the general precept to avoid evil and do good. The doing of good consists of the observance of the two great commandments of love for our God and for our neighbor. The golden rule is added to the statement of the general first principles of morality. "There are two ways," we read, "one of life and one of death; and there is much difference between the two ways. Now the way of life is this: First thou shalt love God that made thee; secondly, thy neighbor as thyself; and all things whatsoever thou wouldest should not happen to thee, neither do thou to another." The rest of the first chapter is occupied with a development of the precept of love for our neighbor, expressed for the most part in the language of the Sermon on the Mount. The second chapter enumerates some of the principal negative duties toward our neighbor. A similar enumeration occupies the third

chapter, but here there is an attempt to give the reason for the different prohibitions, as, for example: "Be not prone to anger, for anger leads to murder; neither a zealot, nor contentious, nor passionate; for from all these things murders are begotten." In the fourth chapter are set down the duties toward preachers of the Gospel, of making peace, of judging righteously, of almsgiving; duties toward parents, children, servants; of avoiding hypocrisy, and not adding to or taking away from the precepts of the Lord which they had been taught. The chapter concludes with, "This is the way of life."

The fifth chapter consists of a long enumeration of sins, and ends with the prayer, "May ye be delivered, children, from all these."

In the sixth chapter there is a warning against being led away from this teaching by any one, for such a one would not teach according to God. A distinction is drawn between what is required for perfection and what is morally possible. The faithful are bidden specially to beware of what has been sacrificed to idols.

A brief instruction on Baptism occupies the seventh chapter, and in the eighth Christians are taught to fast on Wednesdays and Fridays, so that their fasting-days may be different from those of the Jews, who fasted on Mondays and Thursdays. They are told to say the "Our Father" three times a day. The ninth and tenth chapters give instructions on the celebration of the Eucharist, while the two following deal with the way in which prophets and strangers should be received. The thirteenth chapter prescribes the offering of first-fruits. In the next chapter the faithful are instructed to meet together on every Lord's Day, to offer the Eucharistic Sacrifice, after confessing

their sins, so that their sacrifice may be pure. Enemies, too, should be reconciled lest the sacrifice be defiled. It was of this sacrifice that Malachias prophesied. The fifteenth chapter deals with the election of bishops and deacons and the respect which is due to them. The duties of fraternal correction, of prayer and almsdeeds, are enjoined as they are contained in the Gospel of Our Lord. The last chapter contains an exhortation to watch, and inculcates the necessity of faith and perseverance, for Antichrist will appear and seduce many. The treatise concludes with a short description of the signs of the last day.

The whole of the second Book of the "Pastor" of Hermas is a document of early Christian moral teaching very similar to the "Didaché," but more attempt may be observed in it to show the connection between one prohibition and another, and to give reasons and motives for their observance.

A great advance is observable in the catechetical works of Clement of Alexandria. They are almost exclusively devoted to moral teaching, which their learned author illustrates and confirms by constant quotations from the Greek classical authors. With an enthusiastic and personal love for Jesus Christ, and faith in His teaching as a divine and full revelation of the truth to men, he combines a high esteem for reason and philosophy. According to Clement, philosophy was the pedagogue of the pagan world, preparing it for Christ and leading it to Him, as the law did the Jews. Philosophy is the handmaid of theology, he says, and the dictates of reason are but the promptings of the Word which illuminates every man that cometh into the world. This, of course, is but a development of ideas which we find in the Scriptures of the Old and New

Testament, and it is a natural consequence of Christian teaching concerning God and His relation to man and to the world. It is a very superficial view which regards the action of Clement and other Fathers in the use they made of reason and philosophy as a corrupting influence in Christian teaching. With them, as with the scholastics in the Middle Ages, that action was the necessary result of a firm faith in the Gospel message, and the natural desire to understand it and penetrate its full meaning as far as possible. It was *Fides quærens intellectum*, the moving spirit of Catholic theology from the beginning. Better than any lengthy exposition, an extract or two from Clement will show how far the science of moral theology had progressed at the end of the second century. The following extract is taken from an apologetic work entitled "An Exhortation to the Heathen."

"Wherefore, since the Word Himself has come to us from heaven, we need not, I reckon, go any more in search of human learning to Athens and the rest of Greece, and to Ionia. For if we have as our teacher Him that filled the universe with His holy energies in creation, salvation, beneficence, legislation, prophecy, teaching, we have the Teacher from whom all instruction comes; and the whole world, with Athens and Greece, has already become the domain of the Word. For you, who believed the poetical fable which designated Minos the Cretan as the bosom friend of Zeus, will not refuse to believe that we who have become the disciples of God have received the only true wisdom; and that which the chiefs of philosophy only guessed at, the disciples of Christ have both apprehended and proclaimed." [1]

[1] Exhortation to the Heathen, c. 11.

The next extract from the "Pædagogus," a work containing instructions for recent converts, shows the place which reason or conscience holds in Christian ethics.

"Everything that is contrary to right reason is sin. Accordingly, therefore, the philosophers think fit to define the most generic passions thus: lust, as desire disobedient to reason; fear, as weakness disobedient to reason; pleasure, as an elation of the spirit disobedient to reason. If, then, disobedience in reference to reason is the generating cause of sin, how shall we escape the conclusion that obedience to reason, — the Word, — which we call Faith, will of necessity be the efficacious cause of duty? For virtue itself is a state of the soul rendered harmonious by reason in respect to the whole life. Nay, to crown all, philosophy itself is pronounced to be the cultivation of right reason; so that, necessarily, whatever is done through error of reason is transgression, and is rightly called sin." [1]

The "Stromata," or "Miscellanies," are a collection of materials for the ethical instruction and training of the Christian theologian. The philosophical and theological detail to which Clement descends in the treatment of his subject may be illustrated by an extract from the fourteenth chapter of the second Book of the "Stromata," on the different ways in which an act may be involuntary. The matter of course belongs to the treatise on Human Acts, sometimes said to be the last treatise which was added to our manuals of morals.

"What is involuntary is not matter for judgment. But this is twofold — what is done in ignorance, and what is done through necessity. For how will you judge concerning those who are said to sin in involuntary modes? For either

[1] Pædagogus, i, c. 13.

one knew not himself, as Cleomenes and Athamas, who were mad; or the thing which he does, as Æschylus, who divulged the mysteries on the stage, who being tried in the Areopagus was absolved on his showing that he had never been initiated. Or one knows not what is done, as he who has let off his antagonist, and slain his domestic instead of his enemy; or that by which it is done, as he who in exercising with spears having buttons on them, has killed some one in consequence of the spear throwing off the button; or knows not the manner how, as he who has killed his antagonist in the stadium, for it was not for his death but for victory that he contended; or knows not the reason why it is done, as the physician who gave a salutary antidote and killed, for it was not for this purpose that he gave it, but to save." [1]

As yet no attempt had been made in the Church to write a systematic treatise of morals by reducing the various virtues and vices to logical order under appropriate general principles. This step was taken by St. Ambrose at the end of the fourth century. This great Father and Doctor of the Church composed his work "De Officiis" for the instruction of the clergy of his church of Milan. He expressly tells us that he followed Cicero's work with the same title as his pattern. Cicero wrote his book for the instruction of his son; St. Ambrose desired to write for the instruction of his spiritual children. Although he followed Cicero closely in the arrangement and treatment of the matter, yet he never loses sight of what appears to have been the chief motive that he had in view in the composition of his work; namely, to demonstrate the superiority of Christian over pagan ethics.

[1] Stromata, ii, c. 14.

The work is divided, like Cicero's, into three Books. In the first he treats of what is honorable and dishonorable. He points out that the philosophic distinction between ordinary and perfect virtue has its counterpart in the Gospel, which distinguishes between what is matter of strict precept and of counsel. Certain elementary duties, as those toward parents and elders, are touched on, and then follows a discussion on the four cardinal virtues. The second Book treats of what is expedient with reference to eternal life. The third Book treats of what is honorable and expedient in conjunction, and the author has no difficulty in reconciling these conflicting principles according to Christian teaching. "For," he writes, "I said that nothing can be virtuous but what is useful, and nothing can be useful but what is virtuous. For we do not follow the wisdom of the flesh, whereby the usefulness that consists in an abundance of money is held to be of most value, but we follow the wisdom which is of God, whereby those things which are greatly valued in this world are counted but as loss. For this *κατόρθωμα*, which is duty carried out entirely and in perfection, starts from the true source of virtue. On this follows another, or ordinary duty. This shows by its name that no hard or extraordinary practice of virtue is involved, for it can be common to very many." [1] This principle of perfection is then applied to the pursuit of gain and other questions.

A very famous book of morals, somewhat more restricted in scope than the "De Officiis" of St. Ambrose, is the "Pastoral Care" of St. Gregory the Great. This, together with the same author's "Morals" on Job, was a favorite

[1] De Officiis, iii, c. 2.

textbook in the Middle Ages. It lays down the qualities required in those who have the cure of souls, how they themselves should live, how they should instruct and admonish those subject to their authority. The book was brought to England by St. Augustine and translated into English by King Alfred for the benefit of the bishops and priests of his kingdom.

A word must here be said on Christian asceticism, which has been so utterly misunderstood and misrepresented by such writers as Lecky and Harnack, and whose true relation to Christian morals is so seldom perceived by non-Catholic authors.

Christ our Lord expressly taught that renunciation of self, of the world with its riches and pleasures, was in a certain sense a necessary condition of discipleship. This renunciation, however, admitted of different degrees, as is also plain from the Gospels. Some were called only to spiritual poverty and detachment, and these hoped to save their souls by remaining in the world without being of it. Outwardly they lived much like other people, but their affections were detached from this world and centered on God and eternity. They went to heaven by the way of the commandments. Others, on the contrary, voluntarily embraced the counsels of poverty, chastity, and obedience, given by Our Lord to those who were called, and who felt that they had the spiritual strength to follow the call. They made a special profession of following the counsels, and were assigned a place of honor in the Christian assemblies, but at first they seem to have lived in the bosom of their families. They soon, however, began to find it very difficult to persevere in their adopted form of life while exposed to the distractions and temptations of the world,

and this, together with the violence of the persecutions, drove them into the desert. There they lived at first solitary lives as hermits, but before long they began to come together and put themselves under the authority of some ancient Father of the desert renowned for his prudence and sanctity. Their aim was to subdue their passions and ascend the heights of Christian perfection. The task is notoriously difficult both in theory and in practice, and many mistakes were made. The Church had not yet drawn up her minute code of laws for the regulation of religious life. Those writers, however, who industriously pick out the mistakes and the exaggerations of indiscreet fervor, and piece them together to produce a picture of Christian monachism and asceticism, only succeed in producing a caricature. To convince oneself of this it is sufficient to dip into the "Institutes of Monasteries" and the "Conferences" of Cassian, who was in the middle of a long life in the year 400. In the twelve Books of his "Institutes" Cassian describes the dress of the monks, their method of singing the divine office, the training of postulants and novices, and then he devotes the last eight Books to a minute account of the nature, causes, and remedies of the eight principal vices which bar the way to the summit of Christian perfection. He maps out every portion of the pilgrim's progress to his heavenly country, and shows what dangers and obstacles he will meet by the way. In brief, he says, progress toward perfection begins with the fear of God, from which arises a salutary sorrow for sin, which leads to renunciation and contempt of the world; this begets humility, from which springs mortification of the will, and by this all vices are subdued and extirpated. Then all virtues begin to flourish in the soul, which thus

arrives at purity of heart and the perfection of apostolic charity.[1]

The vices to be overcome are classed under eight different heads by Cassian, and he says that the classification was admitted by all.[2] These principal or capital vices are typified by the seven peoples whom the Israelites were commanded by God to extirpate when they came into the land of promise. Egypt makes the eighth from which they had been delivered, and which, Cassian says, typifies gluttony. From this vice the monk is indeed delivered by his abandoning the world for the desert, but he may not extirpate it altogether; he should aim only at curbing its excesses. Gregory the Great adopted in substance the teaching of Cassian on the capital vices, but by making pride the queen of all the rest, and placing it in a category by itself, the other seven became the seven deadly sins which with their daughter vices were so famous in the literature of the Middle Ages, and figure in the books of morals and in the catechisms of Christian doctrine to the present day.

To show how conservative the Catholic tradition has been even in the expression of doctrine I will give the following passage in St. Gregory's own words:

"Ipsa namque vitiorum regina superbia cum devictum plene cor ceperit, mox illud septem principalibus vitiis, quasi quibusdam suis ducibus devastandum tradit. Quos videlicet duces exercitus sequitur, quia ex eis proculdubio importunæ vitiorum multitudines oriuntur. Quod melius ostendimus, si ipsos duces atque exercitum specialiter, ut possumus, enumerando proferamus. Radix quippe cuncti mali superbia est, de qua, Scriptura attestante, dicitur:

[1] De Cœnobiorum Institutis, lib. iv, c. 43. [2] Collatio v, c. 18.

Initium omnis peccati est superbia.(*Ecclus.* x. 15). Primae autem ejus soboles, septem nimirum principalia vitia, de hac virulenta radice proferuntur, scilicet inanis gloria, invidia, ira, tristitia, avaritia, ventris ingluvies, luxuria. Nam quia his septem superbiæ vitiis nos captos doluit, idcirco Redemptor noster ad spirituale liberationis prœlium spiritu septiformis gratiæ plenus venit.

"Sed habent contra nos hæc singula exercitum suum. Nam de inani gloria inobedientia, jactantia, hypocrisis, contentiones, pertinaciæ, discordiæ, et novitatum præsumptiones oriuntur. De invidia, odium, susurratio, detractio, exsultatio in adversis proximi, afflictio autem in prosperis nascitur. De ira, rixæ, tumor mentis, contumeliæ, clamor, indignatio, blasphemiæ proferuntur. De tristitia, malitia, rancor, pusillanimitas, desperatio, torpor circa præcepta, vagatio mentis erga illicita nascitur. De avaritia, proditio, fraus, fallacia, perjuria, inquietudo, violentiæ, et contra misericordiam obdurationes cordis oriuntur. De ventris ingluvie, inepta lætitia, scurrilitas, immunditia, multiloquium, hebetudo sensus circa intelligentiam propagantur. De luxuria, cæcitas mentis, inconsideratio, inconstantia, præcipitatio, amor sui, odium Dei, affectus præsentis seculi, horror autem vel desperatio futuri generantur. Quia ergo septem principalia vitia tantam de se vitiorum multitudinem proferunt, cum ad cor veniunt, quasi subsequentis exercitus catervas trahunt. Ex quibus videlicet septem quinque spiritalia, duoque carnalia sunt." [1]

The "Conferences" of Cassian are represented by him as the teachings of celebrated abbots on various questions of the spiritual life. They are partly speculative, partly practical. There are twenty-four in all, each being divided

[1] Moralium, lib. xxxi, c. 45.

into a greater or less number of chapters. These two works have provided an ample store of moral and ascetical doctrine for all subsequent Catholic writers on the subjects treated in them.

A large portion of moral theology is taken up with the duties arising from the positive legislation of the Church. In this legislation we have the practical application of Christian moral principles to the varying requirements of time and place, and change and variety are here conspicuous. With the establishment of the Christian religion the positive precepts of the Mosaic law ceased to be binding, but the Church received from her divine Founder authority to make new laws for the sanctification and salvation of her children. The apostles used this legislative authority, as we see from the Epistles of St. Paul, especially from those to Timothy and Titus, and within twenty years after the Ascension we find them legislating in the Council of Jerusalem on the disputed question of legal observances. The decree which we have in the Acts [1] was a true positive law imposing a new obligation on the faithful concerned, as long as the peculiar circumstances of the time rendered its observance desirable and necessary.[2] This council of the apostles formed the type and pattern for the ecumenical and provincial councils of the Church which were to be held in the future. Innumerable laws and regulations have been enacted by these, affecting Catholic life, discipline, and worship. The Bishops, too, as successors of the apostles have continued in all ages to exercise the legislative authority committed to them by God and the Church. The Roman Pontiffs, especially, in the exercise

[1] Acts xv. 28, 29.

[2] It ceased to bind in the Latin Church about the ninth century.

of their jurisdiction over the whole Church in succession to Blessed Peter, have in all ages made wise laws for the peace and prosperity of the Christian people. As instances of this action of the Popes in the early centuries may be mentioned St. Clement's first epistle to the Corinthians in the first century, St. Victor's decision about the observance of Easter in the second century, St. Stephen's about the baptism of heretics in the third, and similar action on the part of Popes Liberius, Damasus, and Siricius. Subsequently papal decisions became frequent and notorious. Collections of the decisions issuing from all these sources of positive law began to be made in very early times. Of these some have survived the ravages of time. The "Didascalia of the Apostles" may in the judgment of the learned be ascribed to the first half of the third century, and the so-called "Constitutions of the Apostles" together with the "Canons of the Apostles" to the early part of the fifth century. The materials of which these collections are composed are, of course, still more ancient. At the beginning of the fourth century the decrees of the councils were collected and arranged at first in chronological order in the East. At the beginning of the sixth century systematic collections arranged under suitable titles began to appear. Of these early collections of canons the most celebrated is that of John the Scholastic. In the West, Dionysius Exiguus made his translation of Greek canons into Latin about the year 500. A copy of this collection was presented by the Pope to Charlemagne when he was in Rome, and he caused it to be received and approved by the clergy of his empire in 802 at the great Council of Aix la Chapelle. Collections of Church laws continued to grow in number and in bulk until in the twelfth century the monk Gratian

issued his "Decretum" which became the most famous of them all, and still forms the first volume of the "Corpus Juris Canonici." It contains some 4000 decisions on law and morals taken from the decrees of Popes, the canons of councils both general and particular, the opinions of the Fathers, and even from the civil law.

No attempt of course can be made in this short sketch to trace the varying phases through which the innumerable positive laws of the Church have passed. It will be sufficient for our purpose to trace in outline those chief precepts which bind all Catholics and which are specially known as the precepts of the Church. They are usually reckoned six in number: the due observance of Sundays and feast-days, the days of fasting and abstinence, confession and communion, the support of pastors, and the prohibition of marriage within certain degrees of kindred and of its solemnization at certain times of the year.

The observance of the Sunday and its substitution for the Sabbath appears to be due to apostolic institution. There are traces of it in the New Testament; in the "Didaché" the faithful are bidden to come together on the Lord's Day, as it was called even then in honor of the Resurrection, and offer the eucharistic sacrifice after confessing their sins. In the second century the custom of observing the Lord's Day was universal throughout the Church. The chief duty to be performed on that day was to hear Mass. Very soon particular provincial laws began to be enacted urging the obligation and imposing penalties on transgressors. At the beginning of the fourth century the Council of Elliberis in Spain decreed that any one who might be absent from Mass on three successive Sundays should be deprived of communion. The Council of Agde

at the beginning of the sixth century prescribed that all were to hear an entire Mass on Sunday and not leave until after the blessing of the priest on pain of a public reprehension by the Bishop.

It was natural that when Sunday became the Christian Sabbath it should be kept much in the same way as the Jews kept their Sabbath. While knowing from the teaching of Our Lord Himself that pharisaic exaggeration was to be avoided in this matter, and from St. Paul that the sabbatical rest was no longer of obligation, still St. Cæsarius of Arles in the sixth century expressly says that the Doctors of the Church decreed to transfer all the honor of the Sabbath to the Lord's Day. The very necessity of hearing Mass on that day made a certain abstention from work also necessary. Tertullian testifies to the Christian custom of his day in this respect. Constantine prescribed that judges and artisans in towns should abstain from work on the Sunday, but that agriculture should be allowed on account of necessity. The strictness with which the Sunday repose was observed varied somewhat according to time and place in the period with which we are dealing.

Besides the Sunday other feast-days began gradually to be observed in the same manner by hearing Mass and abstaining from servile work. Easter and Pentecost were assigned to movable Sundays, but the days on which renowned martyrs suffered for the Faith, those on which churches were dedicated, Ascension Day, Christmas Day, and the Epiphany, were soon added to the list. The letter of the Church of Smyrna concerning the martyrdom of St. Polycarp in the middle of the second century expresses the intention of celebrating the anniversary of the day of mar-

tyrdom with joy, both in memory of those who had suffered and as a preparation for those who survived.[1]

As the Christian Church took over the Jewish Sabbath but changed the day on which it was observed and rejected the exaggerations of the Pharisees in its observance, so, too, it adopted the Jewish practice of fasting at stated times. As we have seen from the "Didaché" the fast of Monday and Thursday was changed into one on Wednesday and Friday. The obligation of fasting on all Wednesdays and Fridays ceased almost entirely about the tenth century, but the fixing of those days by ecclesiastical authority for fasting, and the desire to substitute a Christian observance at Rome for certain pagan rites celebrated in connection with the seasons of the year, seem to have given rise to our Ember Days. In the time of St. Leo, in the middle of the fifth century, the Ember Days were a settled institution, though the time at which they fell varied somewhat at different times and in different places.

The earliest indication that we have of the fast of Lent is contained in a short extract from Irenæus which has been preserved for us by Eusebius.[2] Writing to Pope Victor about the middle of the second century, St. Irenæus says that the controversy in the East was not merely about the proper time of celebrating Easter but also about the manner of fasting. "For some think," he says, "that they ought to fast only one day, some two, some more days; some compute their day as consisting of forty hours night and day; and this diversity existing among those that observe it is not a matter that has just sprung up in our times, but long ago among those before us, who perhaps not having ruled with

[1] Cf. A. Villien, Histoire des Commandements de l'Église, 1909.
[2] Historia ecclesiastica, v, c. 24.

sufficient strictness, established the practice that arose from their simplicity and inexperience, and yet with all these maintained peace, and we have maintained peace with one another; and the very difference in our fasting establishes the unanimity of our faith." At the time this was written the Lenten fast was obviously very short, and there was no uniformity even in its duration. Tertullian, fifty years later, refers to the Lenten observance as the fulfillment of the words of Our Lord: "But the days will come when the bridegroom shall be taken away from them — then shall they fast in those days."

The first allusion to a period of forty days' fast occurs in the fifth canon of the Council of Nicæa (325). In the time of St. Leo in the fifth century the period was sufficiently well established to be referred by him to apostolic institution. The period was six weeks, but omitting Sundays the actual fasting days were only thirty-six in number. The four days before the first Sunday of Lent were added sometime in the seventh century. The fasts assigned to certain vigils arose from the practice of the early Christians of assembling on the eve of a feast and spending the night in prayer, fasting, and reading the Scriptures. By degrees matins took the place of the night office, and the vigil office was moved back to the Saturday morning, as we see to this day from the morning office of Holy Saturday. The fast was thus prolonged through the Saturday till after the morning office of the feast of next day.

The fast which used to be observed on the rogation days took its rise in France at the close of the fifth century and by degrees spread to other Churches. The interrupted fast of Advent was introduced as a preparation for Christmas toward the end of the fourth century. The manner of

fasting has varied greatly at different times and in different places. At first the fast seems to have been absolute and continuous. During the days of the bridegroom's absence the faithful neither ate nor drank anything. When the period was lengthened such a total fast became impossible, but at least in the East food was restricted on fast days to one meal of bread, salt, and water, taken in the evening, or at least not before three in the afternoon. In the time of St. Gregory fish was allowed at the single meal in the West. Flesh meat was never allowed on fasting days.

The essence of fasting is still placed by theologians in the single meal, but many relaxations have crept in by degrees. The monks while listening to a *Collatio* of Cassian before going to bed introduced the practice of drinking an acidulated liquor called *posca*. By degrees fruits and lighter kinds of food in limited quantity were added, and when about the thirteenth century the full meal began to be taken at twelve midday, the evening collation became an established practice.

In the thirteenth century it was an accepted principle that liquid does not break the fast, and this became the source of another relaxation. A little wine, or coffee, or chocolate, was taken sometimes in the morning, with candied fruits (*electuaria*) on occasion. The practice was not condemned when the Sacred Penitentiary was asked about it in 1843, provided that the solid food taken then did not exceed two ounces in weight.

At first all seem to have fasted except children and those who were sick. St. Thomas' opinion that those who are still growing are not bound to fast, and that in general the period of growth lasts till the completion of the twenty-first year, has prevailed. Exemptions in favor of workmen and

others were soon admitted, and toward the close of the Middle Ages dispensations from the law of fasting began to be granted. The Lenten indult is now an established custom.

The precept of abstinence from flesh meat which is still observed on Fridays is a survival of the obligation of fasting on that day which obtained in the primitive Church. As we have seen, the "Didaché" prescribed fasting on all Wednesdays and Fridays, and to this fast all the faithful except mere children and the sick were formerly bound. About the tenth century the obligation of the Friday fast was reduced to one of abstinence from flesh meat, and the Wednesday fast after being similarly mitigated gradually disappeared altogether.

While in the East Saturday was observed as a festival in honor of the creation,[1] at Rome and in other Churches of the West it began in early times to be observed as a fasting day. On account of the difference of discipline on this point great difficulties arose in the fourth century, as we know from the correspondence of St. Augustine and St. Jerome. St. Ambrose said that he kept festival on Saturday when he was at Milan and a fast when at Rome, and he advised St. Augustine to follow the same rule. About the eleventh century the Saturday fast was reduced to an obligation of abstinence, and this is the common law of the Church to-day, but many countries are dispensed from its observance. A dispensation from abstinence on Saturdays, the feast of St. Mark, and on Rogation Days was granted for England by a rescript of Propaganda, May 29, 1830.

The Sundays in Lent were never observed as fasting

[1] Apostolic Constitutions, vii. 23.

days, but they early became days of abstinence as they are to this day, though usually a dispensation is granted to eat meat on them.

Annual confession and communion was first made a positive universal law of the Catholic Church in the Fourth Lateran Council (1215). As we know from the Gospel of St. John [1] both confession and communion were prescribed by Our Lord, but He determined neither precept in detail. The practice of the different Churches in the early ages was various in respect to both precepts. We will first trace in outline the history regarding the precept of annual communion.

From the earliest times, as we have seen, Mass was celebrated for the assembled faithful on Sundays, and all who were present appear to have received holy communion. In some places it was the practice for the faithful to take home with them consecrated particles and communicate themselves therewith out of Mass. Many at Rome, in Spain, and in Africa received communion daily. This was a common practice at the end of the fourth century, as we learn from the letters of St. Jerome and St. Augustine. The latter interprets the daily bread for which we ask in the Lord's Prayer as holy communion. The Council of Agde (506) decreed that those who did not communicate at least on the feasts of the Nativity, Easter, and Whit-Sunday were not to be reckoned as Catholics. In subsequent centuries this became a general rule in the Western Church; in the East, according to Theodore of Canterbury, the law was much stricter. The Greeks, he says, both laity and clerics, communicate every Sunday, and any one who omits to do so on three Sundays is excommunicated.

[1] John vi. xx.

A synod held 747 at Cloveshoe in England prescribed that innocent youths and those in whom years had cooled the ardor of passion should be exhorted to communicate very frequently. A synod held under St. Patrick in the fifth century decreed that the Eucharist was to be received at all events at Easter, and that any one who neglected this duty was not a member of the Church. Robert Pullen, an Englishman who wrote in the middle of the twelfth century, tells us that in his day some communicated more frequently, others less so, but that even laymen followed the rule of the Fathers and communicated at least three times a year. So that when the Lateran Council established the universal law that all who had come to years of discretion were bound to communicate at least at Easter, it made no new rule; it merely enforced by universal statute the least that was expected of any one who called himself a Catholic.

The precept of annual confession is intrinsically connected with that of Easter communion both in the Church's legislation and in its own nature. For, as the Catechism of the Council of Trent teaches,[1] the power of order, although primarily it refers to the consecration of the Eucharist, yet also comprises all that is necessary to dispose the faithful to receive the Eucharist worthily and profitably. It comprises, then, the power to forgive sins, inasmuch as no one who is conscious of mortal sin may receive holy communion without previous confession and absolution. The Council of Trent[2] teaches that the words of St. Paul, "Let a man prove himself," have always been understood in the Church of the necessity of sacramental confession and absolution before holy communion when there is con-

[1] Pt. ii, c. 7, q. 6.

[2] Supra, p. 106.

sciousness of mortal sin. The law of the Lateran concerning annual confession and communion is thus one law, confession being ordinarily a necessary preparation for holy communion in those who rarely communicate. That the Church always understood this is witnessed to by Alcuin in the eighth century,[1] by St. Leo in the fifth,[2] St. Augustine in the fourth,[3] and St. Cyprian in the third.[4] We have the same conjunction of confession and communion in the sentence of the "Didaché": "But on the Lord's day do ye assemble and break bread, and give thanks, after confessing your transgressions, in order that your sacrifice may be pure."[5] In all probability the confession here spoken of should be interpreted as meaning sacramental confession to a priest. The Council of Trent, then, was justified in saying that before receiving holy communion it had always been considered a duty to go to confession when there was consciousness of mortal sin. In the fifth or sixth century a practice sprang up which was the forerunner of the Lateran law of annual confession. At the beginning of Lent public penance was imposed on those who had been guilty of great and notorious crimes. In some of the Penitential Books[6] the priest is bidden to invite all who are conscious of mortal sin, and even all who by any sin whatever have soiled their baptismal robe, to make humble confession to their own priest on Ash Wednesday, and accept the penance enjoined according to the canons. If there was any special reason for granting absolution at once, that was done,

[1] De Psalmorum Usu, P. L. C. i. 499.
[2] Epist. 108, P. L. liv. 1011.
[3] Serm. 278, P. L. xxxviii. 2273.
[4] Epist. 10, P. L. iv. 254; Epist. 11, ib. 257; De Lapsis, xvi. ib. 479.
[5] C. xiv. [6] Schmitz, Bussbücher, i, 775.

otherwise absolution was deferred till Maundy Thursday when, the penance having been performed, the penitent was absolved and admitted to communion. This was a mitigation of the earlier discipline of some Churches, especially in the East, according to which public penance sometimes lasted for years.[1] The name of Shrove Tuesday, and the custom of receiving ashes on the head on Ash Wednesday, still remind us of the old discipline of the Catholic Church. It was natural, then, that when the Church made it obligatory on all to receive holy communion at least every Easter, it should also impose the obligation of annual confession. The law indeed does not indicate Easter as necessarily the time for the annual confession, but in practice it follows the time for the annual communion. Originally the annual confession had by law to be made to the parish priest or to the Bishop of the penitent, but for centuries it has been lawful to make it to any priest who has approbation for hearing confessions in the place.

The faithful are bound by natural and divine law according to the teaching of St. Paul[2] to contribute to the support of their pastors. For some centuries the revenues of the Church derived from the offerings of the faithful and from other sources constituted one fund, and this was administered by the Bishop. The support of the poor, the maintenance of public worship, as well as the support of the clergy and other needs were all supplied from the common fund. According to a decretal of Pope Gelasius (501) the Church revenues were to be divided into four portions, one for the Bishop, another for the clergy, a third for the relief of the poor and strangers, the fourth for the

[1] Duchesne, Christian Worship, p. 435.
[2] 1 Cor. ix, Gal. vi. 6.

Church fabrics. In his celebrated answers to St. Augustine, Gregory the Great tells the first archbishop of Canterbury that as he was a monk he did not need a separate portion, and should be content to share in common with his clergy. For several centuries no positive law of the Church was needed to compel the faithful to do their duty in this matter. The Fathers who occasionally urge the obligation are content to appeal in support of it to the teaching of St. Paul or to the law of tithes under the Mosaic dispensation. The Penitential attributed to St. Theodore enjoins that the custom of the province should be observed relative to contributions to the Church, but that the poor were not to be subjected to violence for the sake of tithes or other matters. Positive ecclesiastical laws, however, began to appear both on the continent and in England in the eighth century. Thus the seventeenth article of the legatine council held in England by the authority of Pope Adrian I (785–787) contained the following provision: "Wherefore also we solemnly lay upon you this precept, that all be careful to give tithes of all that they possess, because that is the special part of the Lord God; and let a man live on the nine parts, and give alms." At first there was some variety in the appropriation of tithes, but when the parochial system was introduced, between the tenth and thirteenth century, the appropriation of tithes to the parish priest became the settled rule. In modern times, at least in English-speaking countries, the offerings of the faithful constitute almost the only source of Church revenues as they did in the early ages of Christianity, and their apportionment and distribution are regulated by special laws.[1]

[1] Constitution of Leo XIII, Romanos Pontifices.

As marriage was raised to the dignity of a sacrament by Christ our Lord, and the Church alone has jurisdiction over the administration of the sacraments, it follows that Christian marriage is subject exclusively to the laws of God and of the Church. There are several passages in the Epistles of St. Paul [1] which show that the Church was conscious of her authority in this matter, and that she used it from the earliest times. St. Ignatius in his letter to St. Polycarp says that it is proper that Christians should contract marriage according to the judgment of the Bishop, and Tertullian asserts that marriages which were contracted without being previously notified to the Church were in danger of being considered as no better than adulteries and fornications. The history of the many laws relating to Christian marriage is too large a subject to be treated here even in outline. We will confine ourselves to the impediments of consanguinity and close time.

The natural and divine law prohibits marriage in the first degree of the direct line, and most probably in all degrees indefinitely in the same line. In the collateral line, also, it most probably forbids marriage at least in the first degree. With respect to further degrees in the collateral line the Church adopted the Mosaic legislation, and there are no traces of her having exercised further the independent power which she certainly possessed to enlarge or restrict the limits of kindred before the fourth or fifth century. The Council of Epaon (517) forbade marriages between second cousins, Gregory II (721) prohibited marriage with relations in general, and from the eighth to the elev-

[1] 1 Cor. v, vii; 2 Cor. vi. 14.

enth century the prohibition was extended to the seventh degree according to the canonical mode of reckoning. The fourth Council of Lateran (1215) restricted the prohibition to the fourth degree, and this law still remains in force.

As the solemn celebration of marriage is not in keeping with penitential exercises, a council of Laodicea in the fourth century forbade the celebration of marriage during Lent. Subsequently the solemnization of marriage was forbidden from Septuagesima Sunday till the octave of Easter, during three weeks before the feast of St. John Baptist, and from Advent till after the Epiphany. There was a dispute as to the three weeks before the feast of St. John Baptist, and Clement III, at the end of the twelfth century, decided that the period was to be interpreted as extending from the Rogation Days till the Sunday after Pentecost. The Council of Trent[1] decreed that close time for the solemnization of marriage was to extend from Advent till after the Epiphany, and from Ash Wednesday till after Low Sunday, and this is the modern discipline.

We must not leave this first period in the history of Moral Theology without saying something about the Penitential Books which began to appear in the sixth century and subsequently became very numerous. They were intended as a help to Bishops and priests in their duty of imposing canonical penances on sinners and reconciling them to God and the Church. At first they were little more than lists of sins with the appropriate canonical penance annexed to each sin. The quality and length of penance assigned were

[1] Sess. xxiv, c. 10.

derived from the councils or from the canonical letters of St. Basil, St. Peter of Alexandria, St. Athanasius, and other Fathers of the Church. Afterward chapters were added containing short moral rules on a great variety of subjects, the method of receiving and dealing with penitents, and the method of reconciling them. They are of importance in the history of Moral Theology as furnishing a standard by which the malice of various transgressions was measured according to a great variety of circumstances. They fell into disuse with the gradual cessation of public penance in the Church.

Section II

The Scholastic Period

It is not possible to indicate any particular year when the scholastic period began. We may say that the patristic period closed with the death of St. Bernard, the last of the Fathers, in the year 1153. Many of the characteristics of scholasticism, however, and especially the application of philosophy to the exposition and defense of theology are conspicuous in the works of many of the Fathers. In their work, too, of systematizing theology the schoolmen had many predecessors among the Fathers, and especially St. John Damascene and St. Isidore of Seville. Nor is the common assertion that the Fathers favored Platonism while the scholastics adopted Aristotelianism quite warranted by facts. Clement of Alexandria especially, and other Fathers as well, were eclectic as philosophers, and borrowed what they thought was true from any and every source. Still we may for practical purposes say that scholasticism began in the twelfth century. Then it was

that the growth and development of theology began afresh. It had been interrupted for seven hundred years by the necessity of civilizing the barbarians who had broken up the Roman Empire and settled in its territories. From this time moral theology has come down to us in two distinct channels. Peter Lombard may be looked upon as the fountain-head of the first stream, and St. Raymund of Pennafort of the second.

Peter Lombard wrote his work on the Sentences between the years 1145 and 1150. He therein treats of the whole of theology, both dogmatic and moral. He wished to counteract the rationalizing tendencies which as a pupil of Abelard he had noticed in the schools of Paris. To the various and erroneous views which the spirit of rationalism had introduced, Peter opposed the traditional doctrine handed down in the writings of the Fathers. After much consideration, as he tells us, he found a guiding principle for the distribution and ordering of the subject-matter of theology in a sentence of St. Augustine. Christian revelation, contained in the Holy Scriptures, has for its subject-matter either things or signs. Under signs come the sacraments, and things are either such as we have fruition of, or such as we use, or such as we both use and enjoy by fruition. Under the first head comes God, one in nature and three in person. Under the second come all created things, the angels, man, his end, fall, and redeeming grace. Under the third, the incarnation, faith, hope, charity, the seven gifts of the Holy Spirit, the Ten Commandments. The whole matter of theology is thus systematically arranged in four Books. Each Book is divided into Distinctions, devoted to some special point on which the traditional doctrine is laid down by quoting appropriate extracts (*Sententiæ*) from the

works of the Fathers. Apparent or real differences of opinion are noted and as far as possible reconciled with each other. Although Hugo of St. Victor, Robert Pullen, and other theologians had previously composed similar books of Sentences, yet the work of Peter Lombard soon eclipsed them all in the welcome that it received. It remained the recognized textbook of theology until the end of the sixteenth century, when its place was taken by the "Summa" of St. Thomas. Nearly all the great scholastics wrote Commentaries on the "Sentences" of Peter Lombard, developing, illustrating, defending, and sometimes correcting the doctrine which they found there, especially from the speculative point of view. In these Commentaries and in the Summas of scholastic theology we have a most abundant and valuable source of the speculative side of Christian ethics.

To meet the more practical and concrete needs of the confessor, St. Raymund of Pennafort composed his "Summa de Pœnitentia et Matrimonio," about the year 1235. He, also, merely collected and systematized the abundant material which had been left by his predecessors. He had no more intention of introducing changes into the traditional doctrines of Christianity than had Peter Lombard. But as his aim was not speculative but practical, he drew his material especially from Gratian's "Decretum," from the decisions of Popes and the councils of the Church, as well as from the Fathers. The work "De Pœnitentia" is divided into three Books. In the first Book sins against God are treated of, in the second sins against one's neighbor, and in the third irregularities, dispensations, purgations, sentences, penances, and remissions. Each Book is divided into Titles, which contain an orderly and logical exposition of some

particular subject. Thus in the first title on *Simony*, the sin is defined, the origin of the name is explained, the different kinds of simony are indicated, with the penalties incurred and the dispensations which may be obtained. Then follows a discussion of doubtful questions and cases. Finally some rules of law on the matter are laid down and explained.

The work of St. Raymund was the first of those innumerable handbooks written for the training and use of the confessor especially from the practical and casuistical point of view. Although in the treatment of the different titles the work of St. Raymund leaves little to be desired, yet it lacks something in orderly arrangement and in completeness. These defects were soon made good by others. A Friar Minor, of Asti, in the north of Italy, composed the "Summa Astensis" in the year 1317. In the Roman edition of 1728 it fills two volumes folio, and in its aim, in the matter which it contains, and in the method of treatment, it differs little from the handbooks of moral theology which are published at the present day. The matter is divided into eight Books. The first Book treats of divine and human law and contains the doctrine of the Ten Commandments. The second treats of virtues and vices, beginning with several titles devoted to human acts, voluntary and involuntary actions, to expounding in what the goodness or malice of actions consists, and merit. The cardinal and theological virtues and the sins opposed to them are explained in detail. The third Book contains the doctrine on contracts and last wills; the fourth that on the sacraments in general, and on Baptism, Confirmation, and the Holy Eucharist. The treatise on Penance and Extreme Unction in the fifth Book contains also the doctrine on prayer, fasting, almsdeeds, restitution,

and indulgences. That on Orders in the sixth Book treats also of churches and sacred vestments, ecclesiastical burial, parishes, prebends, tithes, of the various grades of the clergy and of religious and their obligations. Censures and ecclesiastical penalties occupy the seventh, and Matrimony the eighth Book.

The dogmatic treatment of moral theology reached its high-water mark in the second part of the "Summa" of St. Thomas of Aquin. That marvelous production of genius has never been surpassed or even equaled as an exposition of the general principles of Christian ethics. Neither has the casuistic treatment of morals in general made much progress since the thirteenth century. Of course there have been numerous changes in discipline during the last six centuries, and these require to be noted in new moral treatises as they occur. There have also been some changes in theological opinion. As an illustration of such a change we may instance that concerning the use by superiors of knowledge gained from confession. St. Thomas and scholastic theologians commonly held that a superior who knew from confession of a dangerous occasion of sin to one of his subjects might use his authority to remove his subject out of the danger, provided that thereby he violated no principle of justice nor made known to others the sin which had been confessed to him. This opinion is now quite obsolete and it has been virtually condemned by the Holy See.[1] But in spite of some such changes in detail, the general assertion remains true that moral theology to-day is substantially what it was in the thirteenth or at the beginning of the fourteenth century.

[1] Supra, p. 232.

There is, however, one important exception to this general statement. That exception is due to the express formulation at the end of the sixteenth century of the doctrine of probabilism.

We must, however, be on our guard against exaggerating the importance of probabilism and confounding it with moral theology in general. After all, probabilism is only concerned with the solution of doubtful questions. There is an immense body of moral doctrine which is certain and where probabilism or other similar theory of morals does not enter. There are also, it must be confessed, many doubtful questions, especially connected with the application of general rules to particular cases, and it is in the solution of these doubtful and disputed questions that probabilism is concerned. All Catholic divines state or take for granted the doctrine that it is sinful to act with a doubtful conscience, without making up one's mind that the action which is contemplated is morally right. This is the teaching of Holy Scripture: "All that is not of faith," *i.e.* done with the conscientious conviction that it is right, "is sin," says St. Paul.[1] But if this be so, what are we to do in doubtful matters, where perhaps divines themselves disagree, and some teach that an action is right, while others assert that it is wrong? In such cases we can only act, according to the doctrine of St. Paul, if we are able to make up our mind that the action is lawful and honest. How can this be done?

Before the close of the sixteenth century, when Bartholomew à Medina published his "Exposition" on St. Thomas, there was no commonly recognized method for forming one's conscience in doubtful matters. The

[1] Rom. xiv. 23.

"Summa Astensis" devotes the last title of the second Book to the subject of "Perplexities of Conscience." The author distinguishes perplexities of law from perplexities of fact. The former, he says, occur when there are two apparently contrary opinions about the lawfulness of an action, the latter when a man believes that in avoiding one sin he must perforce commit another. He has much to say about perplexities of fact, but about perplexities of law, which alone concern us here, he simply observes that they can be removed in whatever state a man may be, but he does not tell us how this may be done. He refers indeed to Alexander of Hales, who wrote before St. Raymund of Pennafort, and who in the article of his "Summa" devoted to the subject of "Conscience" tells us that a perplexity of law is to be removed by the unction of the Holy Spirit, who teaches concerning all things.[1] St. Raymund gives a more satisfactory rule and says shortly that a perplexity arising from a difference among Doctors is to be solved by reducing the contrary opinions to agreement, for there is no real but only apparent contradiction in law. This puts us on the right track; it tells us that for the solution of doubtful cases the theologians of the time followed the ordinary rules of legal interpretation, the chief among which was the rule of law which guided Gratian in the composition of the "Decretum" and Peter Lombard in his work on the Sentences, and which the Roman lawyers had expressed by saying that it is meet to make one law agree with another — *Conveniens est jura juribus concordare.*[2]

Although this was the chief rule of law to be followed when authorities differed, it was by no means the only one,

[1] Summa, ii, q. 120.

[2] L. unica, C., de inofficiosis dotibus,

Later authors, such as Angelus de Clavasio (1480), Sylvester Prierias (1516), and Navarrus (1560) give lists of the different rules of law to be applied to the solution of doubtful cases in different circumstances. We may take them from Navarrus, as they are substantially the same in all the authorities of the time. When there are different opinions among Doctors, says Navarrus in effect, that opinion should be preferred which is confirmed by custom, or grounded on a text of law, or which rests on an invincible argument. If none of these rules serves, then the common opinion should be followed, and that may be called a common opinion which six or seven approved authors adopt, though there may be fifty others who blindly follow each other like sheep against it, for weight and not number is mainly to be considered in such questions. If that rule does not suit the case, then the opinion should be chosen which is backed by more numerous authorities and reasons; then that which is more lenient, or which favors marriage, a last will and testament, liberty, a private individual against the State, the validity of an act, or the defendant in an action at law. If in none of these ways one opinion is better than the other, then that should be adopted which the greater number of theologians follow if the matter belong to theology, or canonists if it belong to canon law, or civilians if it belong to civil law. To these rules Navarrus adds the note that in the forum of conscience it is sufficient to choose as true the opinion of a man of virtue and learning.[1]

Sylvester Prierias tells us that all were agreed that when Doctors differed, a man might follow the opinion of one Doctor even though he was drawn to follow him by affection

[1] Manuale confessariorum, c. 27, n. 288.

without subtle investigation into the grounds on which his opinion rested.

While the Fathers of the Church, such as Gregory Nazianzen, and the schoolmen with St. Thomas solved particular cases of doubt in favor of liberty by applying the rule of probabilism that a doubtful law cannot impose a certain obligation, yet up to the time of Medina it was commonly held that in doubtful cases a man was bound to follow the opinion which seemed to him the better grounded or the more probable. The Dominican Bartholomew à Medina (1577) was the first to show that if it were a question of obligation, not of mere counsel, this was illogical. The more probable opinion may be the safer and better opinion, but we are not usually bound to take the safer or better way; we are at least allowed to take that which is good and safe. And a probable opinion is safe, for good and wise men see no sin nor danger of sin in it, else it would not be probable. So that a probable opinion may be followed even by one who knows and holds that the contrary opinion is more probable.

By these and other arguments Medina put probabilism on a firm basis, and the doctrine was at once received on all hands. It was the logical deduction from principles which all admitted, and so theologians of all schools accepted it at once, though some of them do not seem at first to have realized its far-reaching consequences. Dr. Hall, who published his work "De Quinquepartita Conscientia" in 1598, accepted and defended the new principle, but he placed it side by side with the older methods of forming one's conscience which he copied from Navarrus. Of these methods he remarks that they are so many different ways of forming a probable opinion. He did not fully realize, as

it seems, that the new principle was universal, and rendered the use of the old rules to a great extent unnecessary in the forum of conscience. The same may be said of Azor, who published the first volume of his "Institutiones Morales" in the year 1600. Other theologians, however, such as Vasquez, Suarez, Salon, Laymann, soon realized the significance of the new method, and proceeded to explain, develop, and on certain points to limit its application. It was seen that it can only be applied where the sole question is whether an act is sinful or not; it may not be applied where an end must be attained and may not be placed in jeopardy, or where the validity of an act is in question, or where there is question of the certain right of another.

Section III

The Modern Period

Almost the whole modern period from the opening of the seventeenth century is occupied with the controversy about the right system of moral theology. Modern research has confirmed the historical accuracy of the account of the origin of this dispute which Fr. Antony Terill or Bonville prefixed to his work "Regula Morum," published in 1676. Fr. Terill, S. J., was a learned and acute theologian who taught theology at the English College of the Society at Liège, now represented by Stonyhurst and St. Beuno's. Besides his "Regula Morum" he published another work, "De Conscientia Probabili," in 1668. He was a good and conscientious man and had ample means of knowing the facts to which he testifies. According to Fr. Terill, until about the year 1638 practically all Catholic

theologians of all schools accepted and taught probabilism. The only exception was the not very notable Italian Jesuit Comitolus, who published his "Responsa Moralia" in 1608. Comitolus taught probabiliorism and attributed the doctrine of probabilism quite falsely, to what he calls the shameful lapse of Armilla. The opinion of Comitolus passed almost unheeded, and there was peace and comparative harmony in the schools of morals. This peace began to be broken when the friends of Jansen were planning the publication of his famous book "Augustinus." The first of the five propositions which were extracted from that book and condemned by Innocent X in 1653 asserted that there were some laws of God which could not be observed even by the just, do what they would, and that God did not give grace to enable them to observe these laws. This heretical and blasphemous proposition, which made God a tyrant who gave orders which He knew could not be obeyed, was altogether out of harmony with the prevailing system of moral theology, and its Jansenist supporters began to attack probabilism in order to make an opening for their own rigoristic doctrine. According to Caramuel, who was at Louvain at the time and who wrote a book against them in 1639, they began to teach covertly that the use of probabilism was something new; that he who leaves the safe way and follows probabilism can not but be condemned by God; that opinions which are styled probable among us are not probable with God. The war between probabilism and antiprobabilism had broken out, a war conducted with the greatest heat and passion for two hundred years, and not even yet quite ended. The Louvain Doctors after the condemnation of "Augustinus" by the Holy See retaliated by issuing their propositions against probabilism

in 1655. The strategy was the same as led Döllinger and Reusch to publish their work on "Moralstreitigkeiten," after the definition of Papal Infallibility. The war, however, was soon carried into France where Jansenism had won the support of a few proud spirits of the highest intellectual gifts. Among these Pascal was pre-eminent, and he struck the hardest blow which probabilism has ever sustained by publishing his "Lettres Provinçiales" in 1656. The book is unfair and misrepresents the doctrines which it attacks, but its wit and style gave it at once a place in the classical literature of the world. It was condemned by Alexander VII at Rome in 1657, but by non-Catholics it is still regarded as the last word on the subject of Catholic and especially Jesuit moral theology.

Although the rise of Jansenism was the occasion of the outbreak of war, there were other causes also which contributed to the heat of the combat. Fr. Terill laments the disastrous laxity of opinion on moral questions which was conspicuous in many of the probabilist authors of the day. Many of these wrote books, not to expound the truth, but to attract attention to themselves and acquire notoriety. The means they employed for this purpose was the ventilation of new opinions in morals. By making use of the weak argument from similar cases they broached hitherto unheard of doctrines which were industriously collected by the casuists. The fact that somebody or other had said in his book that an opinion was probable and that it had not been condemned by the Holy See was held sufficient to merit for it a place among probable opinions in moral theology. Fr. Terill, himself a strenuous defender of probabilism, raised his voice against the inrush of laxity. He did much by his writings to improve the theory by

stating and explaining it more accurately than had been done hitherto. He insisted that in order to be accepted as a rule of conduct it was not sufficient that an opinion should have some slight degree of probability, or should only be probably probable; it should be well grounded, seriously and solidly probable in the judgment of experts, of men of virtue and learning. The common method of proving probabilism by saying that one who acts on a probable opinion acts prudently, was objectionable on the theoretical side, and Terill improved it by making use of reflex principles, such as, "A doubtful law is not promulgated and can not bind." This eminent English Jesuit thus tried to stem the tide of laxity in an age of immorality by stating the theory of probabilism more accurately and limiting its use to its proper sphere. Other theologians with the same laudable end in view threw probabilism overboard altogether. This was especially the case with the theologians of the great Order of St. Dominic. A member of this Order had first formulated probabilism, as we have seen, and, as Salon testifies, other Dominicans were conspicuous as being the first to accept and teach it. The most famous Dominican theologians of the time, Ledesma, Bañez, Alvarez, Ildephonsus, and others were all probabilists. No anti-probabilist Dominican was heard of till the year 1656. In that year a general Chapter of the Order was held at Rome and all the members were urged to adopt the stricter opinion in morals. From that time onward the chief Dominican theologians have almost without exception been probabiliorists. Among others are the well-known names of Mercorus, Gonet, Contenson, Natalis Alexander, Concina, Billuart, and Patuzzi, the adversary of St. Alphonsus Liguori.

From the strife of parties different moral systems began to emerge. Jansenist rigorism, which required direct moral certainty against the law to justify a departure from its observance, and which was not satisfied even with a most probable opinion in favor of the lawfulness of an action, was condemned by Alexander VIII in 1690. Laxism, which was satisfied with even a slightly probable opinion as a rule of conduct, had been condemned by Innocent XI in 1679. Probabiliorism and probabilism together held possession of the field. At the beginning of the eighteenth century a few theologians such as Amort, Rassler, and Mayr, defended equiprobabilism. This system required an opinion in favor of liberty to be equally probable with that in favor of the law before allowing it to be used as a rule of morals. It would not allow any one to follow an opinion in favor of liberty which was distinctly less probable than that which favored the law.

These three systems still have their defenders, and the last has acquired strength from the adhesion to it of St. Alphonsus in the later portion of his life. St. Alphonsus Liguori is recognized as the Doctor of moral theology as St. Thomas is of dogmatic. By his writings he drove out of the Church the last remnants of rigorism, and firmly established that common doctrine in moral theology which it has been the aim of the author to expound in these volumes. In spite, however, of general agreement, there are some points of detail which are still matter of controversy among moral theologians.

St. Alphonsus was ordained priest in 1726 when he was thirty years of age. He had been taught the probabiliorist system of morals, but in the course of fifteen years of study and experience in the confessional he came to the conclu-

sion that the system was false and harmful to souls. He then adopted probabilism, and mainly using recognized probabilist authorities, especially of the Society of Jesus, whom he acknowledged to be his masters in this branch of learning, he composed his chief work, the "Theologia Moralis." The first edition appeared in 1748, and a second and much enlarged edition was issued in 1753. In 1755 St. Alphonsus published an elaborate dissertation on probabilism in which he proved the doctrine and refuted the objections commonly brought against it. He became bishop of St. Agatha of the Goths in 1762, and published another dissertation in which he appeared to adopt a new system of moral theology. While admitting that it is lawful to follow a solidly probable opinion, he denied that when in favor of the law there is an opinion which is certainly and notably more probable than its opposite, this latter can be really and solidly probable. The question is one of fact. If this proposition be considered from the practical and concrete point of view, its practical truth may be admitted, and St. Alphonsus probably understood it in this sense. Furthermore, it may be admitted that the doctrine has its value in deciding when an opinion is solidly probable or not, and this was what St. Alphonsus intended. He wished to exclude laxism from his system, and he invented this formula for the purpose. Moderate probabilists secure the same end by stressing *solidly* when they require a *solidly* probable opinion for a lawful rule of action. Considered theoretically and logically, the formula of St. Alphonsus is open to attack, as it is not true that a greater probability, even if notable and certain, does necessarily deprive the opposite opinion of all solid probability. On this point there is still some difference of opinion between

simple probabilists and equiprobabilists, but the dispute has little to do with practical morals. The dissertation of St. Alphonsus was not inserted in the "Moral Theology" of the saint till it reached its sixth edition, and his change of formula made little change in the doctrine of his work. It remained substantially what it always had been — a great work on moral theology written by a moderate probabilist.

Moral theology is still what St. Alphonsus left it. There is general agreement in the schools, a common doctrine which all accept; it only remains to apply this to the social and political conditions which we see growing up around us.

In this modern period of moral theology the sufficiency of attrition without any strictly so-called initial charity on the part of the penitent as a proximate disposition for the remission of sin in the sacrament of Penance may be considered as established. The changed conditions in our modern capitalist society have had their effect on moral questions, for morality must always take account of altered circumstances. Perhaps the chief result in this direction is that a practical solution has been attained of the long controversy about the lawfulness of taking interest for a loan of money. The lawfulness of the practice is now admitted; the only moral question is concerning the amount which may be exacted. The doctrine of the just price is applicable here; money, like other commodities, has in our modern capitalist society its just price.

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